~~25~~ 26 pp 89 pg.

MONTANA LEGISLATIVE HISTORY

Chapter 457 ~~19~~ 2003

Bill H _____ S 363 Original bill & history ✓ C

4 EXHIBITS from CD-ROM

H. Committee on	~~Judiciary~~ Business & Labor		S. Committee on	Judiciary	
Hearing Date(s)	~~3~~ 2/26	C	Hearing Date(s)	2/17	C
	3/18	C			C
		C			C
		C			C
Date Out	3/24	C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Senate BILL NO. 363

INTRODUCED BY [illegible] [illegible]
(Primary Sponsor)
[illegible]

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING AWARDS OF PUNITIVE DAMAGES IN CIVIL CASES; AND AMENDING SECTION 27-1-220, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-220, MCA, is amended to read:

"27-1-220. Punitive damages -- when allowed -- limitation. (1) Except as otherwise expressly provided by statute and subject to subsection (3), a judge or jury may award, in addition to compensatory damages, punitive damages for the sake of example and for the purpose of punishing a defendant.

(2) (a) Unless otherwise expressly provided by statute, punitive damages may not be recovered in any action arising from:

(i) contract; or

(ii) breach of contract.

(b) Subsection (2)(a) does not prohibit recovery of punitive damages in a products liability action or an action arising under 33-18-201.

(3) An award for punitive damages may not exceed $10 million. If a defendant's net worth is $33 million or less, an award for punitive damages may not exceed 3% of the defendant's net worth."

- END -

SB 298 SPONSOR: Thomas, Fred SHORT TITLE: Revise venue in actions against state agencies
REFERRED ON: 03/07/2003 HEARD ON: 03/17/2003
TABLED ON: 03/26/2003
FINAL DISPOSITION: 03/26/2003 (H) Tabled in Committee; in (H) Judiciary

SB 328 SPONSOR: Mangan, Jeff SHORT TITLE: Background checks for employees of drop-in child care
REFERRED ON: 03/07/2003 HEARD ON: 03/24/2003
TABLED ON: 03/24/2003
FINAL DISPOSITION: 03/24/2003 (H) Tabled in Committee; in (H) Judiciary

SB 329 SPONSOR: Mangan, Jeff SHORT TITLE: Juvenile specific detention officer training
REFERRED ON: 03/07/2003 HEARD ON: 03/24/2003
EXECUTIVE ACTION: 03/24/2003 -Bill Concurred -- VOTE: 18 - 0
FINAL DISPOSITION: 04/07/2003 (S) Returned from Enrolling

SB 362 SPONSOR: Grimes, Duane SHORT TITLE: Revise penalties for minor in possession law violations
REFERRED ON: 03/07/2003 HEARD ON: 03/25/2003
EXECUTIVE ACTION: 03/27/2003 -Bill Concurred as Amended -- VOTE: 11 - 7
FINAL DISPOSITION: 04/05/2003 (H) Returned to Senate with Amendments

SB 363 SPONSOR: McNutt, Walter SHORT TITLE: Limit awards of punitive damages in civil cases
REFERRED ON: 03/11/2003
REFERRED ON: 03/25/2003
FINAL DISPOSITION: 04/04/2003 (H) Returned to Senate with Amendments

SB 364 SPONSOR: Cooney, Mike SHORT TITLE: Dangerous drug manufacture or distribution as form of child abuse
REFERRED ON: 03/07/2003 HEARD ON: 03/19/2003
EXECUTIVE ACTION: 03/24/2003 -Bill Concurred as Amended -- VOTE: 18 - 0
FINAL DISPOSITION: 04/05/2003 (H) Returned to Senate with Amendments

SB 394 SPONSOR: Perry, Gary SHORT TITLE: Party awarded costs in most civil actions entitled to attorney fees
REFERRED ON: 03/07/2003 HEARD ON: 03/19/2003
TABLED ON: 03/24/2003
FINAL DISPOSITION: 03/24/2003 (H) Tabled in Committee; in (H) Judiciary

5/13 CHAPTER NUMBER ASSIGNED
CHAPTER NUMBER 611
EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS

SB 363 INTRODUCED BY MCNUTT *LC0711 DRAFTER: LANE*

LIMIT AWARDS OF PUNITIVE DAMAGES IN CIVIL CASES

2/10	INTRODUCED		
2/10	REFERRED TO JUDICIARY		
2/17	HEARING		
2/21	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	5	4
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASSED	35	13
2/24	3RD READING PASSED	36	14
	TRANSMITTED TO HOUSE		
2/26	REFERRED TO BUSINESS AND LABOR		
3/11	REREFERRED TO JUDICIARY		
3/12	RECONSIDERED PREVIOUS ACTION; REMAINS IN COMMITTEE	50	49
3/18	HEARING		
3/24	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	11	7
3/25	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	TAKEN FROM 2ND READING; REREFERRED TO JUDICIARY	50	49
3/26	RECONSIDERED PREVIOUS ACTION; PLACED ON 2ND READING	53	44
4/03	2ND READING CONCURRED	53	47
4/04	3RD READING CONCURRED	51	49
	RETURNED TO SENATE WITH AMENDMENTS		
4/10	2ND READING HOUSE AMENDMENTS CONCURRED ON VOICE VOTE	48	1
4/11	REVISED FISCAL NOTE REQUESTED		
4/11	3RD READING PASSED AS AMENDED BY HOUSE	33	17
4/11	SENT TO ENROLLING		
4/15	RETURNED FROM ENROLLING		
4/15	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
4/22	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 457		
	EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS		

SB 364 INTRODUCED BY COONEY *LC1849 DRAFTER: LANE*

DANGEROUS DRUG MANUFACTURE OR DISTRIBUTION AS FORM OF CHILD ABUSE

1/02	FISCAL NOTE NEEDED		
2/10	INTRODUCED		
2/10	FISCAL NOTE REQUESTED		
2/10	REFERRED TO PUBLIC HEALTH, WELFARE AND SAFETY		
2/14	FISCAL NOTE RECEIVED		
2/14	FISCAL NOTE SIGNED		
2/15	FISCAL NOTE PRINTED		
2/17	HEARING		
2/18	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	6	0
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED AS AMENDED ON VOICE VOTE	49	1
2/22	3RD READING PASSED	49	1
	TRANSMITTED TO HOUSE		
3/07	REFERRED TO JUDICIARY		
3/19	HEARING		
3/24	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	18	0
3/25	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/03	2ND READING CONCURRED AS AMENDED	99	1
4/05	3RD READING CONCURRED	98	0
	RETURNED TO SENATE WITH AMENDMENTS		
4/11	2ND READING HOUSE AMENDMENTS CONCURRED ON VOICE VOTE	47	0
4/12	3RD READING PASSED AS AMENDED BY HOUSE	48	1
4/12	SENT TO ENROLLING		
4/15	RETURNED FROM ENROLLING		
4/16	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/17	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on February 17, 2003 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 363, 2/13/2003
Executive Action: SB 356, SB 18, SJR 10, SB 37

HEARING ON SB 363

Sponsor: **Sen. Walter McNutt, SD 50, Sidney.**

Proponents:
Mark Taylor, Montana Hospital Association
Charles Brooks, Billings Area Chamber of Commerce
Harris Himes, Self
Steve Turkiewitz, Montana Auto Dealers Association
Ray Kuntz, CEO, Watkins and Shepard Trucking
Brad Griffin, Montana Retail Association
Spook Stang, Executive Vice President, Montana Motor Carriers Association
Pat Melby, Montana Medical Association
Carl Schweitzer, Bozeman and Kalispell Chambers, American Subcontractors Association of Montana
John Cadby, Montana Bankers Association
Carey Hegreberg, Montana Contractors Association
Bob Stephens, Montana Grain Growers Association

Opponents:
Al Smith, Montana Trial Lawyers' Association
Larry Anderson, Self
Don Judge, Teamsters Local 190 and the Montana Chapter of the Sierra Club
Gene Fenderson, Montana Progressive Labor Caucus

Opening Statement by Sponsor:

Sen. McNutt explained that over the past several decades punitive damage awards have skyrocketed. Punishment has moved from punishing individuals to punishment of corporations, which ultimately results in punishment to the public. Up front, punitive damages have nothing to do with compensation to an individual. Punitives are awarded after awards have been determined in full. SB 363 does not limit attorneys' fees. In **Sen. McNutt's** opinion, attorneys should not have a vested interest in punitives if they are awarded for the purpose of punishment. **Sen. McNutt** fails to see how attorneys being compensated for punishment is part of the equation. SB 363 places a cap on punitives of three percent of net worth not to exceed $10 million. In addition, **Sen. McNutt** feels the threat of punitives is being used in cases that are never tried. **Sen. McNutt** told of his personal experience in a lawsuit and how he was threatened by plaintiff's counsel with punitive damages. These threats of punitive damages are used to drive up settlements. Punitive damages hurt all Montanans because it increases insurance premiums and costs of products.

Proponents' Testimony:

Mark Taylor, representing the Montana Hospital Association, explained that from a historical perspective, in 2000, the Montana Supreme Court in Finstad struck the unanimous jury verdict requirement in statute for punitive damage awards. HB 212 mirrors that decision and officially strikes the unanimous jury verdict requirement from statute. In terms of SB 363, it is important to understand there is a clear difference between compensatory damages and punitive damages. The rationale behind compensatory damages is to place an injured party back in the place that they were before the injury or wrongdoing. The purpose of punitive damages is two-fold: First, to punish a defendant for a particularly egregious act; and to deter that conduct, or similar conduct, in the future. It is important to recognize that punitive damages are in addition to compensatory damages and are never an offset against litigation expenses. The plaintiff is already made 100 percent whole and punitive damage awards are a windfall. **Mr. Taylor** also believes **Sen. McNutt** was accurate in his theory on how punitive damages are used in real-world application. One hospital responded that in every litigation case, punitive damages were filed as part of the cause of action. Because punitive damages are never covered by insurance companies, that particular hospital had to retain its own legal counsel, which was a major expense. **Mr. Taylor** agreed that punitive damages are used as a threat to bolster settlement amounts.

Charles Brooks, representing the Billings Area Chamber of Commerce, testified that in the interim, the Billings Area Chamber of Commerce prepares a philosophy paper dealing with upcoming issues in the Legislature. The Chamber believes in a civil justice system that is open, accessible to any citizen, and provides full compensation for genuine injury while limiting frivolous litigation. Punitive damages are merely to punish the person being sued. This bill will go a long way toward adjusting problems in the legal arena.

Harris Himes, representing himself, testified that he has been involved in medical malpractice cases both as a plaintiff and a defense attorney. He feels this is a good bill but called the Committee's attention to the difficulty many states are having in keeping doctors. Las Vegas essentially has no doctors because the rates for medical malpractice insurance are so high that they have to life flight patients to other locations. The high cost of medical malpractice insurance is due not only to frivolous lawsuits, but also to punitive damages. He feels **Sen. McNutt's** proposed cap for punitive damages is reasonable.

Steve Turkiewitz, representing the Montana Auto Dealers Association, presented a scenario of a Main Street auto dealer in Montana being sued by a customer, and how that suit could escalate over the years, costing the parties hundreds of thousands of dollars, for a transaction that was initially worth $35,000., **Mr. Turkiewitz** feels it is the threat of punitive damages that causes these lawsuits to escalate.

Ray Kuntz, CEO, Watkins and Shepard Trucking, submitted written testimony in support of SB 363. **EXHIBIT(1).**

(Tape : 1; Side : B)

Brad Griffin, Montana Retail Association, feels SB 363 will go a long way in bringing down the cost of liability insurance in the coming years.

Spook Stang, Executive Vice President of the Montana Motor Carriers Association, submitted written testimony as a proponent of SB 363. **EXHIBIT(2).**

Pat Melby, representing the Montana Medical Association, supports SB 363.

Carl Schweitzer, representing the Bozeman and Kalispell Chambers and the American Subcontractors Association of Montana, feels the ability to get insurance is becoming one of the number one issues in the construction industry. He feels this bill will go a long way in reducing rates and making insurance more available.

John Cadby, representing the Montana Bankers Association, says banks are a target for anyone who has a grievance and banks purchase insurance in an attempt to mitigate those risks. St. Paul has pulled out nationwide of insuring medical providers. Punitive damages create a lottery mentality, and trial lawyers know they can threaten a lawsuit and receive some sort of payment. **Mr. Cadby** stated that bankers have to consider whether a customer will come back and sue if their business does not thrive. This makes it difficult for new businesses to get started in Montana.

Carey Hegreberg, representing the Montana Contractors Association, operates large fleets of trucks, operates cranes, puts up scaffolding, pours concrete, and, in the course of doing business, accidents happen. This bill will go a long way in balancing the legal system in an appropriate manner and will help their members obtain insurance, bank loans, and stay in business and employ people in Montana.

Bob Stephens, representing the Montana Grain Growers Association, supports SB 363.

Opponents' Testimony:

Al Smith, representing the Montana Trial Lawyers' Association, explained the reason for punitive damages is the recognition for the need for a mechanism in the civil trial arena to deter egregious behavior and to punish companies and people who engage in that behavior to set an example. **Mr. Smith** pointed out that punitive damages are not easily won. Section 27-1-221 sets forth the standard for punitive damages. Actual malice must be proved and the person must deliberately proceed to act in conscious and intentional disregard of the high probability of injury to the plaintiff or deliberately proceed to act with indifference to the high probability of injury to the plaintiff. **Mr. Smith** feels this is a difficult standard to meet. **Mr. Smith** submitted two handouts to the Committee **EXHIBIT(3)** and **EXHIBIT(4)**, showing punitive damage awards in Montana. **Mr. Smith** feels punitive damages were awarded sparingly in Montana. Also, **Mr. Smith** pointed out that just because punitive damages were awarded, does not mean the plaintiff actually receives those damages. Often the amount is reduced or taken away by the trial court or on appeal. There is a mechanism under Montana law for the judge or appellate court to set aside or reduce the damages. **Mr. Smith** feels the facts will show there is no crisis in Montana with punitive damages and the award numbers are not huge.

Mr. Smith purported insurance rates are going up for two reasons, the first being our economic situation. Historically, whenever the stock market is down, insurance rates go up. Insurers make their money by taking the money from insurance premiums and investing them in the market. When the market is poor, companies raise their premium rates to cut losses. Publications such as *The Wall Street Journal* and *Business Week* have all come out with articles over the past year saying the insurance industry did it to themselves because they underpriced in the market, did not price premiums in line with what their expected payout would be, and they lost on their gamble in the market. Also, September 11 had a detrimental impact on insurance companies. **Mr. Smith** remembered a past legislative session where they passed a bill putting a cap on damages, which was supposed to make rates go down. This did not happen because lawsuits do not have a direct correlation with insurance rates. Mr. Smith was emphatic that it is not that cut and dried.

In addressing the medical malpractice insurance issue in Nevada, **Mr. Smith** stated very strict tort reforms were passed in Nevada

in response to this insurance crisis. This did not result in rate reductions for premiums.

Mr. Smith feels you cannot have a set amount which will address every scenario because there are times when egregious conduct is so severe it would warrant a higher amount of punitives. **Mr. Smith** feels the Committee should not make this decision for all future cases.

Juries are drawn from the rolls of registered voters. **Mr. Smith** reminded the Committee that the same people who elected them are also used for juries.

Mr. Smith expanded on the fact that while plaintiffs' lawyers may be good, defense lawyers are good as well, and it is a matter for decision by the jury. In addition, he feels past awards of punitive damages were not outrageous.

(Tape : 2; Side : A)

Mr. Smith feels the reason no one from the insurance industry testified is because passing this bill will not reduce rates. **Mr. Smith** urged the Committee to reject the bill.

Larry Anderson, an attorney from Great Falls, would like to know why, in a civilized society, we would limit a jury's discretion to assess punitive damages against the most egregious wrong-doers in society. **Mr. Anderson** spoke about large companies who practice fraud and deserve to be assessed punitive damages. **Mr. Anderson** reminded the Committee that before a jury can award punitive damages they must be persuaded by clear and convincing evidence. Punitive damages are not awarded on speculation. The statute prescribes certain elements of proof, and also must consider the nature and extent of the fraud or malice. The statute also requires an analysis of the net worth of the company. After the punitive damages assessment has been made, the judge has the responsibility to use the same factors in reviewing the award. If the judge decides the jury has used these factors inappropriately in determining the award, the judge can adjust the award.

Mr. Anderson contended the people who assess punitive damages are your neighbors, registered voters, and went on to explain the jury selection process to the Committee. **Mr. Anderson** said all through history, powerful interests do not like to be judged by ordinary people. **Mr. Anderson** gave an anecdote about a case he was involved in where the insurance company deceived the public about its profitability to avoid being exposed to punitive damages.

Don Judge, representing Teamsters Local 190 and the Montana Chapter of the Sierra Club, asked the Committee to consider why the insurance industry is not present at the hearing. **Mr. Judge** feels insurance rates are up because investments are down. **Mr. Judge** feels this bill will limit punitive damage against some of the nation's worst actors. This cap would also apply in class-action lawsuits which would make settlements much lower. **Mr. Judge** feels this bill will not make insurance rates go down and urged the Committee to give the bill a do not pass recommendation.

Gene Fenderson, representing the Montana Progressive Labor Caucus, believes that living in a free society and the right of tort and the right of litigation is one of our most endearing freedoms in this country. This gives the small guy the right to get adjustments from the very powerful. This particular bill stops the leveling of the playing field. **Mr. Fenderson** believes the industries that want this bill are the same industries who fight being regulated. This is a two-way street and **Mr. Fenderson** asked the Committee to limit tort.

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY stated as he listens to the proponents and their desire to reduce insurance, he is concerned and would like an indication from the insurance industry that passage of this bill would reduce insurance rates and what they could expect to see in the way of a percentage of reduction.

Sen. McNutt responded first they need to get a list of suits that are filed which never go to court. This would give a clear idea of how the insurance companies could come in and substantiate that this would lower rates. To **Sen. McNutt's** knowledge, there is no way to get your hands around this issue because the facts only come out when a case goes to court, and there are very few punitives awarded. You would need the other side of the equation to be able to say insurance rates would drop. Punitives are, more often than not, used as leverage in settlements.

CHAIRMAN GRIMES asked **Ms. Mona Jamison, representing The Doctors' Company,** to address the issue and the bill in a previous session which placed a cap on medical malpractice claims.

Ms. Jamison stated they supported that bill vigorously and stated the $250,000 cap on non-economic damages would contribute greatly to slowing the escalation of insurance rates. Experience has shown that premium rates for medical malpractice are rising. States with caps at $250,000 can demonstrate their increases have

only been 15 percent, compared to 40 percent for states without the cap on non-economic damages. **Ms. Jamison** stated the document "Confronting the New Health Care Crisis," published by the U.S. Department of Health and Human Services in July 2002 makes that comparison and sets forth what the differences are in states with and without caps as to the impact on medical malpractice rates. **Ms. Jamison** stated there are a variety of other issues which contribute to the stabilization of premium rates; however the caps have been a huge contributing factor. **Ms. Jamison** added an offset for collateral payments from other sources is also a large contributing factor in stabilization of these rates. As far as The Doctors' Company is concerned, HB 309 had a huge impact on stabilizing premiums for doctors in the state of Montana.

CHAIRMAN GRIMES asked **Ms. Jamison** if she could make any comparisons between that and this bill's ability to stabilize rates for other insurers.

(Tape : 2; Side : B)

According to **Ms. Jamison,** it is a package of reforms, as referenced by the American Academy of Actuaries, that goes toward regulating premium rates. All reforms are viewed as different particular pieces of the pie. **Ms. Jamison** corrected her earlier statement by saying the average premium increase in states with non-economic caps is 15 percent and the states without is 44 percent.

SEN. JEFF MANGAN understands the argument about escalating insurance rates, but is concerned that the Legislature would put itself in a position to override what a jury would look at and limit that jury's decision. He used the W.R. Grace case as an example.

Sen. McNutt responded that if you, as an individual, sued W.R. Grace and were limited to $10 million, that would not be a bad award. **Sen. McNutt** reminded **SEN. MANGAN** that this is punitive damages, not actual damages. This will allow individuals to sue very large companies, and get a very large settlement and punitive damages.

SEN. MANGAN stated sometimes it seems like it is the practice of large companies to put off taking any action, and money is the only thing punitive to them and will affect them in some way.

Sen. McNutt responded he did not think there is anything that will prevent an individual from suing W.R. Grace. **Sen. McNutt** held that a person must be compensated for actual damages before punitive damages are awarded.

SEN. MANGAN understood that a person will be compensated for actual damages first, but again stated sometimes the only thing large companies understand is a monetary punishment.

SEN. GARY PERRY asked **Mr. Anderson** if he should interpret his statement as when dealing with the issue of punitive damages, you are primarily dealing with such companies as W.R. Grace and Ford Motor Company.

Mr. Anderson responded the punitive damage statute has very specific factors to be weighed in the analysis. Those factors are going to weigh in favor of a small, local business. **Mr. Anderson** told of a smaller case he had where the judge awarded punitive damages in the amount of $2,500. The statutory factors in the bill address the situation that someone like **Sen. McNutt** would find himself in as a business owner. **Mr. Anderson** opined most small business owners in Montana do not participate in actual fraud or actual malice.

SEN. PERRY wanted to know if threats of punitive damages exist is smaller communities and smaller businesses.

Mr. Anderson answered that is practically the case. In order for a small business to return a living for its owners, it has to encourage and establish good will. Goodwill will not be established if the business is engaged in actual fraud and actual malice. Juries are members of the community.

SEN. PERRY told **Mr. Stang** he was confused because he gets the impression that we are really talking about W.R. Grace and Ford, and **Mr. Fenderson** has referred to the small guy. There is a vast difference between the two. **SEN. PERRY** asked if there are small trucking outfits under his organization who are threatened by lawsuits which would contain punitive damage awards that could put them out of business.

Mr. Stang replied the handout he gave to the Committee contained a letter from Mr. Foley in Billings, a small trucking company, and Watkins Shepard Trucking is also a small company by national standards.

SEN. JERRY O'NEIL understood that W.R. Grace had paid million of dollars in punitives, yet **Mr. Smith's** list reflects they paid only $83,000.

Mr. Smith responded that they can only disclose what is reported to the public. Many cases against W.R. Grace were settled before trial, and those settlements would not be reflected on the list.

SEN. DAN McGEE asked **Mr. Smith** to address whether an attorney could ever charge implied malice or implied fraud in advance of settlement discussions. **SEN. McGEE** clarified that actual fraud and actual malice are determinations made by the court. **SEN. McGEE** wondered if prior to going to court, it could be alleged that there was malice and fraud and, therefore, if there is found to be actual malice and actual fraud, a plaintiff would further seek punitive damages.

Mr. Smith stated actual malice and actual fraud would be alleged in the complaint and the things that demonstrate actual malice and fraud will be brought out in trial.

SEN. McGEE asked if **Mr. Smith** is aware of any instances where lawyers have used the threat of seeking punitive damages to enhance the potential for higher settlements.

Mr. Smith replied that has not happened to him personally and he is not aware of any situation where that has occurred.

SEN. AUBYN CURTISS has been looking into statistics regarding the asbestos issue. There are about 600,000 cases jamming the court system nationwide, and the American Bar Association (ABA) is considering tort reform. She wonders how much of that is related to punitive damage awards. **SEN. CURTISS** pointed out that according to the RAND Institute of Civil Justice survey, 65 percent of the awards to date have gone to people who are not seriously harmed and their exposure to asbestos has not affected their daily lives. That same study also said they consider 85 percent of the businesses in the country are vulnerable over asbestos issues. **SEN. CURTISS** asked if punitive damages have been awarded to some of the 65 percent of the claimants, where are the rest of the people who have just cause going to come out and where is the money going to come from.

Mr. Smith agreed the ABA has recommended a change to litigation involving asbestos. In that situation, they are talking about 60 percent of the people in Libby who have that disease would be precluded from that settlement. People who are walking around with oxygen tanks 24-hours-a-day would be precluded under these guidelines from getting a judgment. Those may be part of the population the RAND Institute considers to be "not sick." **Mr. Smith** feels part of the reason we are seeing these cases across the country with folks who have not yet exhibited symptoms is that we have a statute of limitations in which lawsuits have to be filed either after you have actually been injured or after you should reasonably know you are injured. For a number of these folks who have X-rays which show scarred lungs, even though they are not yet sick, they have knowledge that their lungs could be

damaged due to asbestos exposure. If they wait until they are sick, they will have missed the statute of limitations. **Mr. Smith** does not know how many of the cases have actually received punitive damages and does not know the specifics of cases that have settled. **Mr. Smith** stated asbestos is a unique area because it takes a long time for it to affect people. Most asbestos litigation is not as cut and dry as it was with W.R. Grace.

SEN. CURTISS then asked **Mr. Smith** if he believes the driving force behind the request for tort reform has to do with changing the statute of limitation relative only to asbestos cases.

Mr. Smith stated the driving force behind the ABA's reforms on asbestos litigation is to protect the asbestos companies.

CHAIRMAN GRIMES asked **Mr. Smith** to explain his position given the nature of the seminars that taught trial lawyers to "go after trucking companies."

Mr. Smith responded the Montana Trial Lawyers Association has not sponsored a seminar on this and believes those seminars may have been sponsored by the American Trial Lawyers Association. **Mr. Smith** does not know the specifics of those seminars.

(Tape : 3; Side : A)

Mr. Anderson responded to **CHAIRMAN GRIMES'** question, and stated he was at the American Trial Lawyers Association's meeting last year and attended the trucking seminars. Certainly, in all of the ATLA seminars, and MTLA's seminars, the focus is what is the evidence you need to gather to prove your case. The question in all those cases is could reasonable prudence minimized or eliminated the injury or death.

CHAIRMAN GRIMES then asked **Mr. Kuntz** about the national task force, and the issues it has dealt with. Specifically, **CHAIRMAN GRIMES** would like to know whether insurance rates have to do with market conditions rather than tort conditions.

Mr. Kuntz replied the task force was made up of economists, insurance company executives, executives of trucking companies, and attorneys. The task force was attempting to find a solution to bring insurance costs down. The Wall Street scenario is partially correct. This, however, is a small part of the situation and insurance companies are not getting a large return on their investments. This does contribute to higher prices. However, the task force determined the single biggest factor affecting insurance rates is the cost of settlements. There are thousands of settlements per year which are over one millions

dollars. The costs of these settlements drive the insurance rates.

CHAIRMAN GRIMES then asked **Mr. Kuntz** what Watkins Shepard's total payroll is in Montana and how much their premium had increased.

Mr. Kuntz responded the total payroll in Montana is $14 million. There liability insurance went from $1.5 to $3.5 million. That was on September 1, eleven days before 9-11. This is the reason most trucking companies are not paying insurance. **Mr. Kuntz** asked the Committee to keep in mind it is their constituents who drive Montana's highways and are at risk if they are involved in an accident with a trucking company that is no longer carrying an adequate level of insurance.

SEN. MIKE WHEAT asked if their insurance covered punitive damages.

Mr. Kuntz replied in several states you can insure against punitive damages and in some states you cannot. He is not sure whether his insurance will cover punitive damages, but added he suspected it would not.

SEN. WHEAT asked if there was a direct correlation between the increase in liability rates and the availability of punitive damages.

Mr. Kuntz explained that plaintiff attorneys look at driving records, hiring records, and look for something in a driver's past that is not really punitive, but then use that threat of a jury perceiving it as being punitive, to drive up the settlement amount.

SEN. WHEAT asked Mr. Kuntz if he would agree that just because a claim for punitive damages is made, does not mean the jury will award punitive damages.

Mr. Kuntz did not quite agree and stated what happens they are not willing to go to a jury trial in most cases to find out. It is the threat of punitives that drives settlement and escalates the amount of that settlement.

SEN. WHEAT reminded **Mr. Kuntz** they have a right to go to a jury trial and find out if punitive damages would be awarded.

Mr. Kuntz stated they do not have the resources to take the risk of a jury awarding $30 million in punitives. They sometimes have to settle cases for an amount that will allow them to walk away and still remain in business.

SEN. WHEAT asked **Ms. Jamison** if medical malpractice policies typically provide coverage for punitive damages.

Ms. Jamison said it is available as a rider on a policy due to the fact that punitives are rare in med mal cases.

SEN. WHEAT asked **Sen. McNutt** why he wants to take the award of punitive damages away from the judge and jury and have the Legislature dictate what those punitive damages are going to be.

Sen. McNutt spoke about the case he was involved in and the threat of punitive damages being used to force settlement of the case for a higher amount.

SEN. WHEAT asked if **Sen. McNutt** would agree the statute requires actual fraud or actual malice before punitive damages can be recovered.

Sen. McNutt feels there are a lot of claims made that are not factual and anything can be alleged.

SEN. WHEAT agreed that anybody can make a claim, but that does not make it so. **SEN. WHEAT** asked what we are going to do to change the threat by changing the punitive damage statute to cap whatever is available, and why not leave it with the judge or jury to make that determination.

Sen. McNutt believes that providing a cap will limit the threat, and that threat is driving up settlement costs. They cannot determine how many cases, that contained punitives for fraud, are filed and then settled.

SEN. WHEAT asked where the empirical data is to support the bill. He believes the bill was brought because **Sen. McNutt** had a case against him and punitive damages were threatened.

Sen. McNutt agreed and stated many others have had the same experience.

SEN. WHEAT asked if there was empirical data that would support his claim that if punitive damages were capped it would impact liability costs.

Sen. McNutt replied he does not have any empirical evidence supporting or not supporting this claim.

SEN. PERRY would like an estimate of the percentage of times a defense attorney will advise his client to go to trial or how

often the defense attorney will tell his client he is better off economically to settle.

Mr. Kuntz replied over the last 15 years, Watkins Shepard has only had two major accidents, and both times the defense attorney recommended settlement rather than going to court. As a company, you have to advise the insurance company to settle for the legal limit, because if you go to court, the amount over the insurance policy limits becomes the company's responsibility. If you push your insurance company and defense attorney too hard, and the award is above what a company is insured for, a company can find itself out of business. In both cases, the defense attorneys recommended settlement for policy limits.

SEN. PERRY confirmed that the decision to settle is purely an economic business decision and generally advised by the defense attorney.

Mr. Kuntz stated **SEN. PERRY'S** understanding was correct.

Closing by Sponsor:

Sen. McNutt closed by stating he has one amendment to offer. The calculation of the $10 million and three percent is incorrect, and the amendment would correct the calculation.

Sen. McNutt urged the Committee to look at the facts. The fact is there are not a lot of punitives awarded, but it is very costly to defend against these claims. The bulk of these cases never get to court. To say the threat of punitives does not drive up settlement costs, then why would an attorney threaten to add punitive damages to the claim against **Sen. McNutt,** if he was not trying to drive up the costs?

Sen. McNutt argued that as far as companies like W.R. Grace and Ford Motor are concerned, we will never know what settlements were made in the cases that did not go to trial. Those settlements are not a matter of record. **Sen. McNutt** stated 9-11 cannot be blamed for the rising cost of premiums, since his premiums have been going up for a long time.

EXECUTIVE ACTION ON SB 356

Motion: SEN. PERRY moved **SB 356 DO PASS.**

Discussion:

CHAIRMAN GRIMES explained the proposed amendment SB035601.avl. **EXHIBIT(5).**

SENATE JUDICIARY
Exhibit No. 1
Date 2-17-03
Bill No. SB363

Testimony on SB 363
Ray Kuntz
CEO of Watkins and Shepard Trucking
Member of ATA Insurance Task Force

The tucking industry is in a crisis with well over 10,000 bankruptcies in the last 3 years including all sizes even as large as Consolidated Freightways. Many Montana companies have been victims and several more are just hanging on.

The trucking industry in Montana employs 1 in 11 workers and is a major part of our economy. Trucks move 88% of Montana's manufactured goods and many communities are only served only by truck. Nationally our industry employs 9.9 million people, consumes 30 billion gallons of diesel fuel, logs 451 billion miles annually and exclusively serves 75% of the communities in the US. Trucking will play a key role in any economic development of this state.

The major reason for the crisis is skyrocketing insurance premiums as premiums have been doubling and even tripling for many carries the last couple years. In September of 2001 our liability premium at Watkins and Shepard Trucking went from $1.5 million per year to $3.5 million per year with most of the increase happening in the excess layers. (Layers over the million-dollar level). In 2002 our carrier asked us for another increase of $500,000 after not having had one serious accident in 60,000,000 million miles.

I belong to the American Trucking Association's Insurance Task Force, a group that was put together to try to find some relief to our problem. The group included several members from the trucking industry as well as insurance experts, economists and legal professionals. What we found is the main reason that we have a problem is that jury verdicts and mediation awards are rising to levels that simplify are not affordable. As a result most companies are losing money writing trucking insurance and have quit writing it. Because we trucking companies carry higher levels of insurance to protect their assets and victims in case of an accident ,we have become a target of the plaintiff bar.

The findings of the Task Force were that unless legislation was passed to keep awards reasonable and insurable there would be no relief in sight,, which would mean the trucking industry, would have to drastically increase rates to survive. This bill is one bill, which will bring relief not only to our industry, but every industry in Montana.

The plaintiff bar is using the threat of punitive damage to drive up compensatory settlements whenever possible. Although you do not see punitive damages actually awarded in that many accidents compensatory settlements are being settled at much higher levels as insurance companies are not willing to take the risk of facing jury awards with a threat of punitive damages. When punitive damages are awarded they are usually very high and growing, making it hard to afford insurance to protect ourselves.

After an accident in today's atmosphere we almost always find a plaintiff attorney pouring our driver records looking for some area that looks like something they can rise the threat of punitive damages. Employee rights laws control our hiring practices and open some doors in some cases. Certain laws make it very difficult and costly to get criminal background checks and even to find out if and applicant has tested positive for drugs at other companies which can look very convincing to a jury that does not understand the restraints we work under during the hiring process. Drug testing laws require random tests and an employee may go years without being randomly selected for a drug test.

Recently we had an accident involving a driver that passed our pre employment drug test and had an accident shortly after going to work for us. He tested positive for meth after the accident. After the accident he testified that he had been addicted for over a year before he went to work for us but meth only stays in your system for 3 days and than you can pass a drug test. There is not a way for us to find out if he had tested positive at another company.

The case involved one injury with about $275,000 in medical costs and around $700,000 in lost income. The case should have settled for between $1 million and $1.5 million, however because of the positive test

we were sued for $30,000,000. Even though we drug tested the driver and DOT law only allows random tests after hiring. The case ended up settling for $5.3 million and is an example of the plaintiff attorney using the punitive threat to drive up the compensatory settlement as we could not afford the risk of going to a very uneducated jury with the future of our company in there hands. The Plaintiff attorney received over $2 million of the settlement and was most concerned that he would be able to advertise the award on television. Our society can not continue to pay attorneys $2 million for one highway accident and expect insurance to be affordable.

SB 363 would still allow a punitive punishment but would keep it reasonable and insurable. It would be one step in taking away high risks that are driving our insurance costs up and allow trucking companies to continue to buy proper levels of insurance, so that victims may be adequately covered in case of a serious accident. Currently insurance costs have made it unaffordable and many carriers have lower insurance to minimal levels and will not have the insurance to take care of the victims in the case of and accident with multiple injuries or fatalities.

Recently AAA found that people in the passenger vehicle account for 98 percent of fatalities in car-truck collisions and that in 80 percent of those crashes, the driver of the car was driving dangerously. So no matter how much safety training we do as trucking companies we can only have an affect on 20% of the truck-car collisions.

I urge to pass this bill so that we can continue to buy insurance at a level that will allow us to survive. This type of reform will eventually allow us to buy adequate levels of insurance to make sure the victims and their families can be properly taken care off in the case of a serious accident. Understand that this bill will not keep a victim from a fair compensatory settlement.

If our economy is too survive in this state you have to make sure that trucking can also survive.

Ray Kuntz

Ray Kuntz

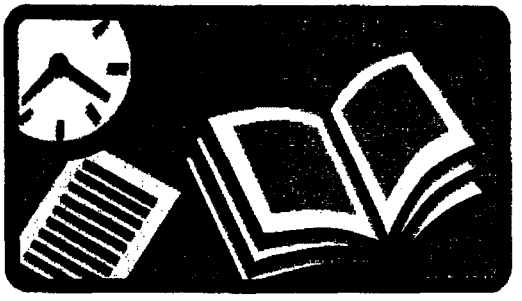


Exhibit: 2

The following exhibit contains several pages, which exceeded the maximum amount that can be scanned.

If you wish to view this exhibit, please contact the:
Montana Historical Society
225 N. Roberts Street
Helena, MT 59601
(406) 444-4774

SENATE JUDICIARY
Exhibit No. 3
Date 2.17.03
Bill No. SB 363

Punitive Damages in Montana - Listed by Type of Case

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Biggart v. Arns,	1990	Assault/violence/DUI	$3,000	$2,000		?	road rage
Copenhaver v. Notbohm,	2000	Assault/violence/DUI	$19,069	$250		?	DUI accident
Dawn Van Heale v. Thomas Van Heale,	1996	Assault/violence/DUI	$472,395	$330,000		?	sexual assault case; amount of awards uncertain from Mont. Law Week!!
Dill v. Arnlund Auto,	1990	Assault/violence/DUI	$60,000	$6,000		?	wrongful discharge, assault and battery
Foster v. Albertson's,	1991	Assault/violence/DUI	$5,000	$5,000		Yes	trial judge directed verdict on assault and false imprisonment during termination interview; Supreme Court remanded to allow plaintiff to develop claim
Giluly v. Miller,	1994	Assault/violence/DUI	$80,283	$15,000		?	DUI accident
Green & Fink v. Lapp & State Farm,	2000	Assault/violence/DUI	$82,292	$20,000		?	DUI accident w/ family
Gregory v. Seliski,	1996	Assault/violence/DUI	$5,280	$20,000		Yes	Supreme Court upheld jury award for violent property confrontation between neighbors
Hein v. Lambrecht,	1990	Assault/violence/DUI	$27,555	$12,000		?	DUI; parties settled punitives before punitive hearing
Kegel v. Rogers,	1990	Assault/violence/DUI	$220,554	$50,000		?	mall shop owner guilty of assault and beating
Khalsa v. Lancione,	1997	Assault/violence/DUI	$80,638	$5,000		?	co-worker was pushed down stairs and injured
Lee v. Kane,	1995	Assault/violence/DUI	$35,308	$19,500		Yes	breach of contract, assault and battery claim; Supreme Court upheld punitive award and remanded after jury failed to award pain/suffering
Lewis v. Kipp,	2000	Assault/violence/DUI	$160,420	$5,000		?	DUI accident
Lopez & Monroe v. Josephson,	1999	Assault/violence/DUI	$106,500	$175,000		?	trial judge affirmed jury's award after hostile, ongoing, threatening neighbor complaints

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Maurer v. Clausen Distrib.,	1994	Assault/violence/DUI	$570,349	$1,075,000		Yes	trial judge set aside both damage amounts and ordered new trial; Supreme Court upheld punitive award and ordered new trial on compensatory; DUI of on-duty employee injured other driver
Morgan v. Mickelson,	1992	Assault/violence/DUI	$86,960	$25,000		?	DUI accident
Onstad v. Payless Shoesource,	1999	Assault/violence/DUI	$500,000	$1,000,000		Yes	Supreme Court upheld damages; sexual assault of store clerk
Prison Riot 9/22/91 Montana State Prison	2000	Assault/violence/DUI	$326,481	$1,009		?	Case involving many plaintiffs and defendants, on many separate counts. 9 plaintiffs awarded $1 each in punitives, 6 plaintiffs awaded $166.66 each in punitives.
Scheetz v. Leverett,	1990	Assault/violence/DUI	$868,701	$25,000		?	wrongful death in hit & run accident
Schnell v. Bonamarte,	1995	Assault/violence/DUI	$9,052	$20,000		?	violent fight at airport led to assault charges
Tillett v. Lippert,	1996	Assault/violence/DUI	$5,354	$5,000		Yes	Supreme Court affirmed judge's award; damage for vehicle and assault
		Assault/violence/DUI		**$2,815,759**	**$0**		
Alpine Ranch v. Langton,	1990	Business/fraud	$18,000	$2,500		?	man wrongfully shot game farm elk
Bache v. Ingraham,	1994	Business/fraud	$13,000	$13,000		?	boundary dispute between neighbors
Baird v. Norwest Bank,	1991	Business/fraud	$38,800	$81,000	**($81,000)**	Yes	Supreme Court reversed punitive award for lack of evidence; collateral seizure without notice
Barrie & Tellavector Pac. v. Steeves,	1991	Business/fraud	$25,000	$1,000		?	white collar crime
Big Sky Hidden Village Owners v. Hidden Village, Inc.,	2000	Business/fraud	$1,046,891	$352,500		?	property development dispute
Bird et al v. Glacier Elec. Coop,	1993	Business/fraud	$1,382,000	$750,000		Yes	tribal court affirmed damages; multiple torts w/in business relationship

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Cahoon v. Visone Corvette,	2000	Business/fraud	$371,636	$350,000		?	tribal court fraudulent car sale
Cass v. Composite Indus.,	2000	Business/fraud	$1,284,342	$400,000		?	securities fraud
Daniels (A Able Trading v. Dean,	1992	Business/fraud	$45,766	$35,000		Yes	Supreme Court affirmed damages; tortious interference with lease
DeShaw v. Hoffman Fine Art,	1996	Business/fraud	$813,582	$250,000		Yes	trial judge sua sponte set aside punitive award; 9th Cir. did not address damages, but remanded after finding that trial judge erred in entering default; fraudulent art transaction
Eatinger v. Johnson,	1994	Business/fraud	$12,351	$5,352		Yes	Supreme Court affirmed; attorney converted funds from estate
Fadness v. Kuntz,	1996	Business/fraud	$42,898	$32,000		Yes	Supreme Court affirmed jury's award from property transaction dispute
Flikkema et al v. Kimm,	1992	Business/fraud	$104,191	$30,000		Yes	Supreme Court affirmed punitive award; undue influence exercised in estate case
Floerchinger v. Transit Homes of Am.,	1991	Business/fraud	$26,518	$26,000		?	negligent transport of mobile home after lied about licensure and insurance
Goetz v. HMR Joint Venture,	2000	Business/fraud	$17,642	$70,000		?	interference with real estate purchase
Haines Pipeline v. MPC,	1991	Business/fraud	$502,361	$1,000,000	**($1,000,000)**	Yes	Supreme Court reversed punitive award based on disallowance of punitives for bad faith breach of contract
Jorgenson v. Ferron,	1994	Business/fraud	$32,587	$27,413			claim settled for $60,000 total before punitive damage amount hearing convened;
Kaufman v. Beaco,	2000	Business/fraud	$0	$500		?	fraud involving van lease; jury found $0 damages incurred, but without a hearing, wrote on special verdict form "$500" next to punitives
Keller v. Dooring,	1991	Business/fraud	$36,395	$5,000	**($5,000)**	Yes	Supreme Court reversed punitive award; warranty deed breach

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
King v. Big Z. Trucking,	1993	Business/fraud	$9,400	$35,000		Yes	Supreme Court affirmed damages; corporation converted personal property
Kitchen Krafters v. Eastside Bank,	1992	Business/fraud	$350,000	$18,000		?	property financing dispute
Lee v. Armstrong,	1990	Business/fraud	$26,658	$5,000		Yes	Supreme Court affirmed; property sale w/ bad title
Lincoln & Noland v. Pieper,	1990	Business/fraud	$8,000	$10,000		Yes	Supreme Court affirmed; water rights dispute
Maloney v. Century 21 Home & Investment Center, Costantino, and Lee	2000	Business/fraud	$268,100	$76,149		Yes	Real estate fraud; Supreme Court reduced compensatory award by $120,000 and upheld punitive award
Ober v. Boehm & Montana Homes,	2000	Business/fraud	$523,370	$250,000		?	Real estate constructive fraud, conversion, breach of covenant of good faith
Orc v. Homecraft Indus.,	1993	Business/fraud	$21,750	$20,000		?	violation of Consumer Protection Act in home window replacement
Rocky Mtn. Enter v. Pierce Flooring,	1997	Business/fraud	$35,000	$51		Yes	Supreme Court upheld; criminal interference with competitor's business
Rostad & Rostad Corp. v. Investment Mgmt.,	1991	Business/fraud	$131,430	$204,900		Yes	9th Cir. affirmed securities fraud awards
Shultz v. Hooks,	1994	Business/fraud	$36,858	$50,000	**($50,000)**	Yes	Supreme Court set aside entire judgment; attorney malpractice and improper disqualification by judge
Stuart's House of Vacuums v. Whirlpool,	1992	Business/fraud	$250,000	$2,750,000			uncertain
TWC Int'l v. Greene,	1990	Business/fraud	$16,000	$10,000	**($10,000)**	Yes	9th Cir. reversed punitive award for lack of jurisdiction over underlying tort claims
Wellman & Hall v. Cropmate,	1995	Business/fraud	$646,140	$969,210		?	tribal court breach of contract
		Business/fraud		**$7,829,575**	**($1,146,000)**		**$6,683,575**

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Williams v Hohensee & Jakubek,	1998	Defamation	$250	$750		?	defamation pursuant to breach of subdivision agreement
Williams v. DeVinney,	1993	Defamation	$1,100			?	defamation - amount unknown
Anderson v. ANR Freight Sys.,	1990	Discrimination/discharge	$80,000	$25,000		?	wrongful discharge
Durham v. MPC,	1994	Discrimination/discharge	$175,304	$74,696		?	JNOV claim rejected & damages upheld; ADA failure to make accommodation for mental illness
Fairhurst v. Reimer Exp.,	1996	Discrimination/discharge	$212,802	$100,000		?	wrongful discharge
Robinson v. Addwest Gold,	1992	Discrimination/discharge	$850,000	$10,500,000		Yes	trial judge upheld jury's award on review; settled on appeal; breach of employment agreement
Stokan v. Education Logistics,	1996	Discrimination/discharge	$62,113	$125,000		?	wrongful discharge of whistleblower
Wagner v. Montana Coyote,	1996	Discrimination/discharge	$28,500	$12,200		?	wrongful discharge; amount of awards uncertain from Mont. Law Week!!
Wagner et al v. Mont-Mill Operating,	1994	Discrimination/discharge	$514,028	$125,000		?	tribal court case involving employment discrimination against tribal members
		Discrimination-discharge		**$10,961,896**	**$0**		
KLT & RCM v. Garn et al,	1995	Government/privacy	$60,000	$83,000	**($15,000)**	?	trial judge reduced punitive award to $15,000; secret videotaping of teenage models
Mock v. Smith & Hot Springs,	1994	Government/privacy	$100,000	$4,000		?	malicious prosecution claim against sheriff
Wood v. INS,	1993	Government/privacy	$400	$2,000		?	INS invasion of privacy
Conn v. Missoula Co. and Galbavy	2002	Government/privacy	$33,000	$5,000			Sexual contact with a minor by a Missoula Co. counselor.
		Government/privacy		**$94,000**	**($15,000)**		**$79,000**

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Cartwright & Ness v. Equitable Life	1994	Insurance Bad Faith	$358,591	$6,157,845		Yes	trial judge reduced punitive award to $4,018,000; Supreme Ct. reinstated to $6,127,845; insurance fraud, misrepresentation
Coddington v. Wabash Life Ins.	1992	Insurance Bad Faith	$6,383	$1,600,000	**($1,600,000)**	Yes	9th Cir. reversed punitive award; evidence not support actual malice; UTPA violation
DeBruycker v. Guaranty Nat'l Ins.	1994	Insurance Bad Faith	$70,676	$540,000		Yes	trial judge reduced punitive award to $50,000; Supreme Court held trial court erred in failing to use statutory review of award, remanded for new determination of punitives; UTPA claim for hail crop damage
Dees v. Am. Nat'l Fire Ins.	1993	Insurance Bad Faith	$12,679	$575,000	**($275,000)**	Yes	Supreme Court affirmed trial judge's reduced punitive award; insurance bad faith
Greany v. Western Farm Bur Life Ins.	1992	Insurance Bad Faith	$4,200	$75,000		Yes	9th Cir reversed on basis of legal problems with underlying tort claims; ERISA, etc.
Leep v. Mid-Century Ins.,	1994	Insurance Bad Faith	$346	$50,000		?	insurance bad faith
Palmer v. Farmers Ins. Group	1993	Insurance Bad Faith	$750,000	$750,000	**($750,000)**	Yes	Supreme Court reversed entire award; insurance bad faith
Peris v. Safeco Ins.	1994	Insurance Bad Faith	$171,790	$250,000		?	insurance bad faith
Roberts v. Empire Fire	1996	Insurance Bad Faith	$15,000	$600,000		Yes	Supreme Court held trial judge erred in setting aside judgment after he'd already entered default; insurance bad faith
Stormont v. Nat'l Union Fire Ins.	1999	Insurance Bad Faith	$72,783	$1,100,000		?	during jury's deliberation of punitive damage amount, parties settled for $1.5 mil.; jury had reached $1.1 million punitive verdict; work comp bad faith
Van Valkenburg v. State Farm	1992	Insurance Bad Faith	$25,000	$50,000		?	violation of USCPA
Wheeler v. Reserve Nat'l Ins.	1990	Insurance Bad Faith	$250,000	$750,000		?	insurance bad faith led family w/ sick infant to switch policies
		Insurance Bad Faith		**$12,497,845**	**($2,625,000)**		**$9,872,845**

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Bragg v. McLaughlin	1997	Personal Injury	$27,214	$15,000	**$45,000**	Yes	Supreme Court held that trial judge erred by not applying statutory criteria in determining amount of punitive award; on remand judge awarded $60k
Cloutier v. Armstrong	1998	Personal Injury	$885,000	$50,000		?	trial judge affirmed jury's damage award after semi-truck collision
Finstad v. W.R. Grace	2000	Personal Injury	$400,000	$83,000		Yes	Supreme Court remanded punitive award after numerous procedural errors at hearing
Mason v. Sybron	1992	Personal Injury	$1,000,000	$0		Yes	9th Cir. held trial court erred in not letting jury consider punitives
Maulding v. Hardman	1993	Personal Injury	$56,000	$25,000	**($25,000)**	Yes	Supreme Court set aside punitives on appeal;
Shilhanek v. D-2 Trucking	1998	Personal Injury	$2,897,000	**$220,000**		Yes	Supreme Court affirmed case w/o directly addressing validity of damages; negligent hiring/ driving led to major injuries for family of four
Stanhope v. Lawrence	1990	Personal Injury	$1,000,000	$1,400,000	**($1,176,000)**	Yes	$1.4 million, judge reduced to $224,000; Supreme Court remanded and parties settled for $475,000 during preparation for new trial
		Personal Injury		**$1,793,000**	**($1,156,000)**		**$637,000**
Ingvalson v. Cosco	1999	**Product Liability**	$723,000	**$950,000**		?	product liability claim re folding stool, severe leg damage

SENATE JUDICIARY
Exhibit No. 4
Date 2-17-03
Bill No. SB363

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Alpine Ranch v. Langton,	1990	Business/fraud	$18,000	$2,500		?	man wrongfully shot game farm elk
Anderson v. ANR Freight Sys.,	1990	Discrimination/discharge	$80,000	$25,000		?	wrongful discharge
Biggart v. Arns,	1990	Assault/violence/DUI	$3,000	$2,000		?	road rage
Dill v. Arnlund Auto,	1990	Assault/violence/DUI	$60,000	$6,000		?	wrongful discharge, assault and battery
Hein v. Lambrecht,	1990	Assault/violence/DUI	$27,555	$12,000		?	DUI; parties settled punitives before punitive hearing
Kegel v. Rogers,	1990	Assault/violence/DUI	$220,554	$50,000		?	mall shop owner guilty of assault and beating
Lee v. Armstrong,	1990	Business/fraud	$26,658	$5,000		Yes	Supreme Court affirmed; property sale w/ bad title
Lincoln & Noland v. Pieper,	1990	Business/fraud	$8,000	$10,000		Yes	Supreme Court affirmed; water rights dispute
Scheetz v. Leverett,	1990	Assault/violence/DUI	$868,701	$25,000		?	wrongful death in hit & run accident
Stanhope v. Lawrence	1990	Personal Injury	$1,000,000	$1,400,000	**($1,176,000)**	Yes	$1.4 million, judge reduced to $224,000; Supreme Court remanded and parties settled for $475,000 during preparation for new trial
TWC Int'l v. Greene,	1990	Business/fraud	$16,000	$10,000	**($10,000)**	Yes	9th Cir. reversed punitive award for lack of jurisdiction over underlying tort claims
Wheeler v. Reserve Nat'l Ins.	1990	Insurance Bad Faith	$250,000	$750,000		?	insurance bad faith led family w/ sick infant to switch policies
	1990			$2,297,500	**($1,186,000)**		**$1,111,500**
Baird v. Norwest Bank,	1991	Business/fraud	$38,800	$81,000	**($81,000)**	Yes	Supreme Court reversed punitive award for lack of evidence; collateral seizure without notice
Barrie & Tellavector Pac. v. Steeves,	1991	Business/fraud	$25,000	$1,000		?	white collar crime

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Floerchinger v. Transit Homes of Am.,	1991	Business/fraud	$26,518	$26,000		?	negligent transport of mobile home after lied about licensure and insurance
Foster v. Albertson's,	1991	Assault/violence/DUI	$5,000	$5,000		Yes	trial judge directed verdict on assault and false imprisonment during termination interview; Supreme Court remanded to allow plaintiff to develop claim
Haines Pipeline v. MPC,	1991	Business/fraud	$502,361	$1,000,000	**($1,000,000)**	Yes	Supreme Court reversed punitive award based on disallowance of punitives for bad faith breach of contract
Keller v. Dooring,	1991	Business/fraud	$36,395	$5,000	**($5,000)**	Yes	Supreme Court reversed punitive award; warranty deed breach
Rostad & Rostad Corp. v. Investment Mgmt.,	1991	Business/fraud	$131,430	$204,900		Yes	9th Cir. affirmed securities fraud awards
	1991			$1,322,900	**($1,086,000)**		**$236,900**
Coddington v. Wabash Life Ins.	1992	Insurance Bad Faith	$6,383	$1,600,000	**($1,600,000)**	Yes	9th Cir. reversed punitive award; evidence does not support actual malice; UTPA violation
Daniels (A Able Trading v. Dean,	1992	Business/fraud	$45,766	$35,000		Yes	Supreme Court affirmed damages; tortious interference with lease
Flikkema et al v. Kimm,	1992	Business/fraud	$104,191	$30,000		Yes	Supreme Court affirmed punitive award; undue influence exercised in estate case
Greany v. Western Farm Bur Life Ins.	1992	Insurance Bad Faith	$4,200	$75,000		Yes	9th Cir reversed on basis of legal problems with underlying tort claims; ERISA, etc.
Kitchen Krafters v. Eastside Bank,	1992	Business/fraud	$350,000	$18,000		?	property financing dispute
Mason v. Sybron	1992	Personal Injury	$1,000,000	$0		Yes	9th Cir. held trial court erred in not letting jury consider punitives
Morgan v. Mickelson,	1992	Assault/violence/DUI	$86,960	$25,000		?	DUI accident

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Robinson v. Addwest Gold,	1992	Discrimination/discharge	$850,000	$10,500,000		Yes	trial judge upheld jury's award on review; settled on appeal; breach of employment agreement
Stuart's House of Vacuums v. Whirlpool,	1992	Business/fraud	$250,000	$2,750,000			uncertain
Van Valkenburg v. State Farm	1992	Insurance Bad Faith	$25,000	$50,000		?	violation of USCPA
	1992			**$15,083,000**	**($1,600,000)**		**$13,483,000**
Bird et al v. Glacier Elec. Coop,	1993	Business/fraud	$1,382,000	$750,000		Yes	tribal court affirmed damages; multiple torts w/in business relationship
Dees v. Am. Nat'l Fire Ins.	1993	Insurance Bad Faith	$12,679	$575,000	**($275,000)**	Yes	Supreme Court affirmed trial judge's reduced punitive award; insurance bad faith
King v. Big Z. Trucking,	1993	Business/fraud	$9,400	$35,000		Yes	Supreme Court affirmed damages; corporation converted personal property
Maulding v. Hardman	1993	Personal Injury	$56,000	$25,000	**($25,000)**	Yes	Supreme Court set aside punitives on appeal;
Ore v. Homecraft Indus.,	1993	Business/fraud	$21,750	$20,000		?	violation of Consumer Protection Act in home window replacement
Palmer v. Farmers Ins. Group	1993	Insurance Bad Faith	$750,000	$750,000	**($750,000)**	Yes	Supreme Court reversed entire award; insurance bad faith
Williams v. DeVinney,	1993	Defamation	$1,100			?	defamation - amount unknown
Wood v. INS,	1993	Government/privacy	$400	$2,000		?	INS invasion of privacy
	1993			**$2,157,000**	**($1,050,000)**		**$1,107,000**
Bache v. Ingraham,	1994	Business/fraud	$13,000	$13,000		?	boundary dispute between neighbors

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Cartwright & Ness v. Equitable Life	1994	Insurance Bad Faith	$358,591	$6,157,845		Yes	trial judge reduced punitive award to $4,018,000; Supreme Ct. reinstated to $6,127,845; insurance fraud, misrepresentation
DeBruycker v. Guaranty Nat'l Ins.	1994	Insurance Bad Faith	$70,676	$540,000		Yes	trial judge reduced punitive award to $50,000; Supreme Court held trial court erred in failing to use statutory review of award, remanded for new determination of punitives; UTPA claim for hail crop damage
Durham v. MPC,	1994	Discrimination/discharge	$175,304	$74,696		?	JNOV claim rejected & damages upheld; ADA failure to make accommodation for mental illness
Eatinger v. Johnson,	1994	Business/fraud	$12,351	$5,352		Yes	Supreme Court affirmed; attorney converted funds from estate
Giluly v. Miller,	1994	Assault/violence/DUI	$80,283	$15,000		?	DUI accident
Jorgenson v. Ferron,	1994	Business/fraud	$32,587	$27,413			claim settled for $60,000 total before punitive damage amount hearing convened;
Leep v. Mid-Century Ins.,	1994	Insurance Bad Faith	$346	$50,000		?	insurance bad faith
Maurer v. Clausen Distrib.,	1994	Assault/violence/DUI	$570,349	$1,075,000		Yes	trial judge set aside both damage amounts and ordered new trial; Supreme Court upheld punitive award and ordered new trial on compensatory; DUI of on-duty employee injured other driver
Mock v. Smith & Hot Springs,	1994	Government/privacy	$100,000	$4,000		?	malicious prosecution claim against sheriff
Peris v. Safeco Ins.	1994	Insurance Bad Faith	$171,790	$250,000		?	insurance bad faith
Shultz v. Hooks,	1994	Business/fraud	$36,858	$50,000	**($50,000)**	Yes	Supreme Court set aside entire judgment; attorney malpractice and improper disqualification by judge

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Wagner et al v. Mont-Mill Operating,	1994	Discrimination/discharge	$514,028	$125,000		?	tribal court case involving employment discrimination against tribal members
	1994			**$8,387,306**	**($50,000)**		**$8,337,306**
KLT & RCM v. Garn et al,	1995	Government/privacy	$60,000	$83,000	**($68,000)**	?	trial judge reduced punitive award to $15,000; secret videotaping of teenage models
Lee v. Kane,	1995	Assault/violence/DUI	$35,308	$19,500		Yes	breach of contract, assault and battery claim; Supreme Court upheld punitive award and remanded after jury failed to award pain/suffering
Schnell v. Bonamarte,	1995	Assault/violence/DUI	$9,052	$20,000		?	violent fight at airport led to assault charges
Wellman & Hall v. Cropmate,	1995	Business/fraud	$646,140	$969,210		?	tribal court breach of contract
	1995			**$1,091,710**	**($68,000)**		**$1,023,710**
Dawn Van Heale v. Thomas Van Heale,	1996	Assault/violence/DUI	$472,395	$330,000		?	sexual assault case; amount of awards uncertain from Mont. Law Week!!
DeShaw v. Hoffman Fine Art,	1996	Business/fraud	$813,582	$250,000		Yes	trial judge sua sponte set aside punitive award; 9th Cir. did not address damages, but remanded after finding that trial judge erred in entering default; fraudulent art transaction
Fadness v. Kuntz,	1996	Business/fraud	$42,898	$32,000		Yes	Supreme Court affirmed jury's award from property transaction dispute
Fairhurst v. Reimer Exp.,	1996	Discrimination/discharge	$212,802	$100,000		?	wrongful discharge
Gregory v. Seliski,	1996	Assault/violence/DUI	$5,280	$20,000		Yes	Supreme Court upheld jury award for violent property confrontation between neighbors

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Roberts v. Empire Fire	1996	Insurance Bad Faith	$15,000	$600,000		Yes	Supreme Court held trial judge erred in setting aside judgment after he'd already entered default; insurance bad faith
Stokan v. Education Logistics,	1996	Discrimination/discharge	$62,113	$125,000		?	wrongful discharge of whistleblower
Tillett v. Lippert,	1996	Assault/violence/DUI	$5,354	$5,000		Yes	Supreme Court affirmed judge's award; damage for vehicle and assault
Wagner v. Montana Coyote,	1996	Discrimination/discharge	$28,500	$12,200		?	wrongful discharge; amount of awards uncertain from Mont. Law Week!!
	1996			**$1,474,200**	**$0**		**$1,474,200**
Bragg v. McLaughlin	1997	Personal Injury	$27,214	$15,000	**$45,000**	Yes	Supreme Court held that trial judge erred by not applying statutory criteria in determining amount of punitive award; on remand judge awarded $60k
Khalsa v. Lancione,	1997	Assault/violence/DUI	$80,638	$5,000		?	co-worker was pushed down stairs and injured
Rocky Mtn. Enter v. Pierce Flooring,	1997	Business/fraud	$35,000	$51		Yes	Supreme Court upheld; criminal interference with competitor's business
	1997			**$20,051**	**$45,000**		**$65,051**
Cloutier v. Armstrong	1998	Personal Injury	$885,000	$50,000		?	trial judge affirmed jury's damage award after semi-truck collision
Shilhanek v. D-2 Trucking	1998	Personal Injury	$2,897,000	$220,000		Yes	Supreme Court affirmed case w/o directly addressing validity of damages; negligent hiring/ driving led to major injuries for family of four
Williams v Hohensee & Jakubek,	1998	Defamation	$250	$750		?	defamation pursuant to breach of subdivision agreement
	1998			**$270,750**	**$0**		**$270,750**

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Ingvalson v. Cosco	1999	Product	$723,000	$950,000		?	product liability claim re folding stool, severe leg damage
Lopez & Monroe v. Josephson,	1999	Assault/violence/DUI	$106,500	$175,000		?	trial judge affirmed jury's award after hostile, ongoing, threatening neighbor complaints
Onstad v. Payless Shoesource,	1999	Assault/violence/DUI	$500,000	$1,000,000		Yes	Supreme Court upheld damages; sexual assault of store clerk
Stormont v. Nat'l Union Fire Ins.	1999	Insurance Bad Faith	$72,783	$1,100,000	$400,000	?	during jury's deliberation of punitive damage amount, parties settled for $1.5 mil.; jury had reached $1.1 million punitive verdict; work comp bad faith
	1999			**$3,225,000**	**$400,000**		**$3,625,000**
Big Sky Hidden Village Owners v. Hidden Village, Inc.,	2000	Business/fraud	$1,046,891	$352,500		?	property development dispute
Cahoon v. Visone Corvette,	2000	Business/fraud	$371,636	$350,000		?	tribal court fraudulent car sale
Cass v. Composite Indus.,	2000	Business/fraud	$1,284,342	$400,000		?	securities fraud
Copenhaver v. Notbohm,	2000	Assault/violence/DUI	$19,069	$250		?	DUI accident
Finstad v. W.R. Grace	2000	Personal Injury	$400,000	$83,000		Yes	Supreme Court remanded punitive award after numerous procedural errors at hearing
Goetz v. HMR Joint Venture,	2000	Business/fraud	$17,642	$70,000		?	interference with real estate purchase
Green & Fink v. Lapp & State Farm,	2000	Assault/violence/DUI	$82,292	$20,000		?	DUI accident w/ family
Kaufman v. Beaco,	2000	Business/fraud	$0	$500		?	fraud involving van lease; jury found $0 damages incurred, but without a hearing, wrote on special verdict form "$500" next to punitives

Case	Year	Type	Compen. Econom	Punitives	Change in Punitives	App-eal	Comment
Lewis v. Kipp,	2000	Assault/violence/DUI	$160,420	$5,000		?	DUI accident
Prison Riot 9/22/91 Montana State Prison	2000	Prison Riot	$326,481	$1,009		?	Case involving many plaintiffs and defendants, on many separate counts. 9 plaintiffs awarded $1 each in punitives, 6 plaintiffs awaded $166.66 each in punitives.
Maloney v. Century 21 Home & Investment Center, Costantino, and Lee	2000	Business/fraud	$268,100	$76,149		Yes	Real estate fraud; Supreme Court reduced compensatory award by $120,000 and upheld punitive award
Ober v. Boehm & Montana Homes,	2000	Business/fraud	$523,370	$250,000		?	Real estate constructive fraud, conversion, breach of covenant of good faith
	2000			**$1,608,408**	**$0**		**$1,608,408.00**
TOTALS - 1990-2000				**$36,937,825**	**($4,595,000)**		**$32,342,825.00**
No Awards Reported	2001		$0	$0			
Conn v. Missoula Co. and Galbavy	2002	Sexual assault	$33,000	$5,000			Sexual contact with a minor by a Missoula County counselor.

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 2-17-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

DATE February 17, 2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 363

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Larry Anderson	406-727 8466	Myself	363		X
ALSmith	443-3124	MTLHA	SB363		X
Don Judge	442-2968	MT Chapter, Sierra Club Teamsters Local 190	SB 363		X
Charles Brooks	698-2350	Bill, Inc. Chamber	SB 363	X	
GENE FENDERSON	—	PROGRESSIVE LABOR COUNCIL	SB-363		Y
Pat Melby	442-7450	Mt Med Ass'n	SB363	✓	
Ray Kuntz	442 9536	Watkins + Shepard Trucking	SB 363		
Barry Stang	442-6601	MMCA	SB363	✓	
Bob Stephens	868-6239	Mt Grain Growers	363	✓	
JOHN CADBY	443 4121	MT BANKERS ASSN.	SB 363	✓	
Steve Turkiewicz	442-1233	MT. Auto Dealers Assn	SB363	✓	
Gary Hegreberg	2-4162	Contractors Asso.	363	✓	
Brad Griffith	777-7939	MT Retail/Equip Dealers/Tire Dealers Assn	363	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/17/03

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 363

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Greg Van Hussen	2-0230	State Farm Ins. Co	SB 363	X	
Don Allen	443-3541	WETA	SB 363	X	
Harris Hines		Self	"	✓	
Carl Schweitzer	443-8114	Bozeman & Kalispell Chambers AS Am	SB363	✓	
Mark Taylor	443-6820	Mont. Hospital Assoc.	SB 363	X	
William Duffield	939-4443	Duffield Express	SB 363	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

LEGISLATIVE TAPE LOG

COMMITTEE: Judiciary

DATE: 5-17-03

Sen Wheeler Chair

MINUTES	CONTENT NOTES
9:05	SB 363 - McNutt - SD 50 - Sidney Limits PD - duties - Sh limits - reasonable Punit under - corp - punit public
	P damages nothing to do for use injur absent of contract - not limits defen - state should not have - bill places a cap 3 to
	of act wants not to exceed $10 mill - threat of pun - cases never trial get to courts - Lawsuit - shop order in serv
	depts - Plaintiff damaged - - PA + EC - work thru probs - exp why new a chart needed to be installed - Punit + thumb are
	used to drive up settlements - punit awards hurt all MTs - -
	(1) Prof - Mark Taylor - M Hospital Assoc Cap on punit damages awards - Limited use jury verdict + HB 312 - - mission
	decis - clear duty - comp + dmgs - Plan pun to inj - P damages real world - Law is reserved for egr, etc - punit damages fatal - - never awarded - - forced to retain them on legal consid -
9:15	
12.0	(2) Charles Brooks - Bldg Chamber of Commerce
13.3	(3) Harris Himes - diff states have - keeping Ors low Yrs - no doctors enter - suggest - due to # of frivolous lawsuits - PD
15.2	(4) Steve Turkey - amounts - mandate - -
9:20	

LEGISLATIVE TAPE LOG

COMMITTEE: Judiciary

DATE: 1-17-03

MINUTES	CONTENT NOTES
19.4 9:22	(5) Ray Kuntz - W+S-#14 mills - Trust ~~under~~ 1-14 - Irrev. ~~dem~~ serv. by trust 7590 - - Dies prefer shyness - prob w/ acres - - Dies Tax Issue - per mill of stay - Eq. made in Dist. - Unless Leg. panel - 3 educ topics -
Tape 1B 9.35	(6)
	(7) Sport & Tony - Kritter Fest - OK
	(8) Pat Melby
	(9) Carl Schweitzer -
6.4	(10) John Cadby - MBarley Assn.
11.8	(11) Cary Hegreberg - MCA - -
	(12) Bob Stevens - MT Grain Growers
12.9 9:45	Oppo - - 1 - ~~Al Smith~~ - MTLA Ex - handout
	Other reasons 9/11 Crisis in Ins markets Nebraska -
	Nevada - Malpractice - free lawsuits pursue da -

3

LEGISLATIVE TAPE LOG

COMMITTEE: Judiciary

DATE: 3-17-03

MINUTES	CONTENT NOTES
21.4 (9:55)	Tort reforms not have effect in Dakota
	(2) Larry Anderson --
Tape 2A 10:00	(3) Dan Judges - Teamsters Local 190 - Liberal Club
17.6	(4) Gene Henderson - N Rivers Labor Caucus --
20.9	Judiciary Committee
10:20	Crosby / McNutt
	evidence of indicate passage of bill
	2 - subdel questions
	list of Grants federal - never go to court
	Grimes / Jamison - 23.4
	Mona Jamison - Dakota Co.
	med/mal --
	states w caps - down - increase 15%
	w/o caps = up 40%
	stabilization - of prem rates -
	Amer Acad of Actu - Cap on
	Dkn Co - somewhere in between up -
	Grimes / Jamison -
Tape 2B 10:25	Average prem --
	Mangan / McNutt 1, 2 10:28
	N.C. Stone --
	Allow in 1
	Mangan / McNutt --
6.8	Perry / Anderson - W R Grace --

LEGISLATIVE TAPE LOG

COMMITTEE: Judiciary

DATE: 3-17-03

MINUTES	CONTENT NOTES
11.9 10:40	Perry/Stang
10:42	O'Neil/Smith
	McGee/Smith - implied malice/implied fraud -
	Curtis/Smith 18.0 10:45 Rand Institute 65% of awards --
	Punitive damages/ABA Chang to litigation
	Curtis/Smith
23.6 10:50	Grimes/Smith
	Could reasonable prudence
Tape 3A 10.50	Grimes/Kunty - York Law - Unsound - scope - solutes and costs dam simple negligent fact w cost of seller
	Total payroll
	Total proll $1/4 mil
	Stat 1.5 - 3.5 mill
	Wheat/Kunty - (6.5) issue for p. dam - Client carried dam & availab of p dam on -

LEGISLATIVE TAPE LOG

COMMITTEE: Judiciary

DATE: 2-17-03

MINUTES	CONTENT NOTES
11:00 8.7	Wheat/Kuntz -
11:02	
	Wheat/Garrison 10.7 extra notes on policy
	Wheat/McNutt - award away from judge + jury --
	Wheat/McNutt - no Empirical data - had a class - support - caps have impact on
11:07 16.3	Perry/Kunz - PD must be proved -- penalty of time defense att
11:10 19.2	Closing - Amended 10 mill + 30% Good hearing -
	Unanimous vote for printed 3/3 instead of unanimous
24.5	
11:15	
25.7	SB 356 DP - Amend 01 - McGee. Motion No - DPAA McGee.

5

LEGISLATIVE TAPE LOG

COMMITTEE: Judiciary

DATE: 2-17-03

MINUTES	CONTENT NOTES
Tape 3B	Roll Call
	Tabled SB18 unan Sen Mangan
	SJR 10 DP O'Neil
	~~Adopted~~ Roll Call
11:55	Mangan / Burns
	Dept. of
Taped 4A 12:00	1st offense DUI mandat – mandatory interlock – – Mangan – – very sensitive device –
	How long to take – breath – blow – –
	dui . 08
	Mangan – 70-75 – breath some per sec
	.16 interlock
	Sen Perry – – mandate interlock .16 or over .08 – .16 – discretion
	dui .18 or higher dui .08 – .16 – .16 + higher mandatory

LEGISLATIVE TAPE LOG

COMMITTEE: Judiciary

DATE: 2-17-03

MINUTES	CONTENT NOTES
7.9	Lane
	McGee 12:15 -
	Mangen -- 3rd, 4th degree -
	Berry -- Intent bad check
	McGee -- Intent .08
Tape 4B 12:25	Wheat - felony level - ability to register
	318 - revocation - ability to register
	expungement of records
	4th offense felony
	Mangen - 12.7 12:40 -
Tape 4B 16.5 12:42	

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN DAN MCGEE**, on February 20, 2003 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	SB 419, 2/17/2003; SB 420, 2/17/2003; SB 421, 2/17/2003; SB 434, 2/18/2003
Executive Action:	SB 363; SB 373; SB 389; SB 394; SB 397; SB 419; SB 420; SB 421; SB 434

EXECUTIVE ACTION ON SB 363

Motion: SEN. McGEE moved **SB 363 DO PASS.**

Motion: SEN. McGEE moved the amendment proposed by the sponsor **BE ADOPTED. EXHIBIT(15).**

Discussion:

SEN. GRIMES explained the amendment corrects a mathematical error.

Ms. Lane asked for permission to slightly reword the amendment when she drafts the amendment in final form. The Committee agreed to **Ms. Lane's** request.

Vote: The motion that the Sponsor's proposed amendment **BE ADOPTED carried unanimously. Note: Amendment SB036301.avl** was delivered to the Committee Secretary later that day. **EXHIBIT(16).**

Motion: SEN. McGEE moved **SB 363 DO PASS AS AMENDED.**

Motion: SEN. O'NEIL made a conceptual amendment to place punitive damages on the second cause of action so punitive damages will remain the same as they are presently for the first lawsuit. This statute would come into effect on the filing of a second lawsuit in an effort to stop the punitive damages from stacking up. **SEN. O'NEIL** feels sometimes you have to have punitive damages be higher than three percent. It is unfair for the business to have punitive damages stack up. The first lawsuit should receive damages based on the assets of the business. Subsequent lawsuits should not receive punitive damages, however, since the business has already received punishment.

SEN. WHEAT responded asking **SEN. O'NEIL** to look at the existing punitive damage bill that says one of the categories the judge is supposed to look at in the event of a punitive damage award is previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act. Therefore, this is one of the categories the judge should look at, and it is already in law.

SEN. O'NEIL withdrew his amendment.

SEN. WHEAT stated he does not like this bill and stated there is no evidence showing settlements are being driven up. **SEN. WHEAT** feels there is a statute already in place that contains many,

many road blocks to a punitive damage award. A person would have to get over all the hurdles in place before receiving a punitive damages award. **SEN. WHEAT** trusts juries and judges to make the right decisions in these kinds of cases and does not believe we should be tinkering with this statute and setting arbitrary limitations and taking that decision away from juries and judges.

SEN. McGEE stated his problem is not with the award itself, but is with the threat of that award being used in order to raise the bar of the settlement. He feels this is used as a hammer in settlement negotiations and feels SB 363 will reduce that threat.

Vote: The motion that **SB 363 DO PASS AS AMENDED carried 5-4 by roll call vote.**

EXECUTIVE ACTION ON SB 394

Motion/Vote: SEN. PERRY moved **SB 394 DO PASS.** The motion carried 5-4 by roll call vote.

Motion: SEN. PERRY moved **SB 394 BE RECONSIDERED.** The motion carried unanimously.

Motion: SEN. PERRY moved **amendment SB039401.ajm BE ADOPTED.**

Discussion: SEN. PERRY explained the amendment will insert the words "seeking to ensure fairness in litigation by" in the title of the bill.

Vote: The motion of **SEN. PERRY** that **SB039401.ajm BE ADOPTED carried unanimously.**

Motion: SEN. PERRY moved **SB 394 DO PASS AS AMENDED.**

Discussion:

SEN. PERRY brought to the Committee's intention that the hearing time and room had been changed at the last minute, and several persons who planned on testifying in favor of the bill were unable to attend the hearing. In particular, Mr. Raleigh Johnson, representing NFIB, as well as others who supported the bill, did not get a chance to testify.

Vote: The motion that SB 394 DO PASS AS AMENDED failed 4-5 by roll call vote.

SENATE JUDICIARY
Exhibit No. 15
Date 2-20-03
Bill No. 363

SENATE BILL 363
Introduced Bill
(White Bill)

Bill Sponsor Amendments

1. Pg. 1, ln 19
Following: "may not exceed"
Strike: remainder of subsection
Insert: "the lesser of 3% of a defendant's net worth, or $10 million.

SENATE JUDICIARY
Exhibit No. 16
Date 2-20-03
Bill No. SB363

Amendments to Senate Bill No. 363
1st Reading Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane
February 20, 2003 (2:42pm)

1. Page 1, line 19.
Following: "million"
Insert: "or 3% of a defendant's net worth, whichever is less"

2. Page 1, line 19 through line 20.
Following: "." on line 19
Strike: remainder of line 19 through "worth." on line 20

- END -

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 2.20.03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE			
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 363** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Duane Grimes, Chair

And, that such amendments read:

1. Page 1, line 19.
Following: "million"
Insert: "or 3% of a defendant's net worth, whichever is less"

2. Page 1, line 19 through line 20.
Following: "." on line 19
Strike: remainder of line 19 through "worth." on line 20

- END -

Committee Vote:
Yes 5, No 4.

381636SC.sjo

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2.20.03 BILL # SB363 AMENDMENT # _____

MOTION: Do pass as amended.

NAME	AYE	NO
SEN. BRENT CROMLEY		✓
SEN. AUBYN CURTISS	✓	
SEN. JEFF MANGAN		✓
SEN. JERRY O'NEIL	✓	
SEN. GERALD PEASE		✓
SEN. GARY PERRY	✓	
SEN. MIKE WHEAT		✓
SEN. DAN MCGEE, VICE CHAIRMAN	✓	
SEN. DUANE GRIMES, CHAIRMAN	✓	
	5	4

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 18, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)

Members Excused: Rep. Bill Wilson (D)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 230 (3/13/03); SB 231 (3/13/03); SB 235 (3/13/03); SB 241 (3/13/03); SB 363 (3/13/03)

Executive Action: SB 231 Be Concurred In As Amended; SB 241 Be Concurred In; SB 341 Be Concurred In; SB 230 Be Concurred In As Amended

HEARING ON SB 363

Sponsor: SEN. WALTER L. McNUTT, SD 50, Sidney

Opening Statement by Sponsor:

SEN. McNUTT said this bill limits awards of punitive damages in civil cases.
{Tape: 1; Side: A; Approx. Time Counter: 40 - 101}

Proponents' Testimony:

Steve Turkiewicz, Executive Director, Montana Auto Dealers Association, said this bill concerns the cost of litigation. The availability of unlimited punitive damages affects 95% to 98% of cases settled out of court prior to trial. It is obvious and undisputable that punitive damage claims increase the magnitude of the ultimate settlement and affects the entire settlement process, increasing the probability of litigation.
{Tape: 1; Side: A; Approx. Time Counter: 101 - 155}

Mark Taylor, Montana Hospital Association, said this bill puts a cap on punitive damages but it does not prevent an injured person from collecting for damages.
{Tape: 1; Side: A; Approx. Time Counter: 155 - 210}

Ken Crippen, General Counsel, Watkins & Shepard Trucking, presented written testimony.
EXHIBIT(buh57a01)
{Tape: 1; Side: A; Approx. Time Counter: 210 - 248}

Brian Smith, Vice President and General Counsel, Truckers Express and **Vice President, Montana Motor Carriers Association,** said the trucking industry is the target defendant in every sense. This bill caps punitive damages.
{Tape: 1; Side: A; Approx. Time Counter: 248 - 279}

Spook Stang, Executive Vice President, Montana Motor Carriers Association, provided written testimony.
EXHIBIT(buh57a02)
{Tape: 1; Side: A; Approx. Time Counter: 279 - 340}

Webb Brown, Montana Chamber of Commerce, said he supported this bill.
{Tape: 1; Side: A; Approx. Time Counter: 340 - 357}

Brad Griffen, Montana Retail Association, said they supported this bill.
{Tape: 1; Side: A; Approx. Time Counter: 357 - 359}

Charles Brooks, Montana Chamber of Commerce, said he supported this bill.
{Tape: 1; Side: A; Approx. Time Counter: 359 - 378}

Riley Johnson, NFIB, said they supported this bill.
{Tape: 1; Side: A; Approx. Time Counter: 378 - 389}

Pat Melby, Montana Medical Association, said they supported this bill.
{Tape: 1; Side: A; Approx. Time Counter: 389 - 392}

Carl Schweitzer, Bozeman Chamber of Commerce, Kalispell Chamber of Commerce and **American Subcontractors Association of Montana,** said they supported this bill.
{Tape: 1; Side: A; Approx. Time Counter: 392 - 399}

Bill Leary, Montana Bankers Association, said they supported this bill.
{Tape: 1; Side: A; Approx. Time Counter: 399 - 407}

Don Allen, Western Trade Association, said they supported this bill.
{Tape: 1; Side: A; Approx. Time Counter: 407 - 434}

Tom McGree, Butte resident, said they supported this bill.
{Tape: 1; Side: A; Approx. Time Counter: 434 - 439}

Opponents' Testimony:

Larry Anderson, Attorney at Law, Great Falls, said the fear of a punitive damage award is raising settlements in law suits. This fear is based upon the unjustified filing of punitive damage claims.
{Tape: 1; Side: A; Approx. Time Counter: 439 - Tape: 1; Side: B; Approx. Time Counter: 123}

Al Smith, Montana Trial Lawyers Association, provided written testimony on Premium Deceit; The Failure of "Tort Reform" to Cut Insurance Prices; Montana's Punitive Code - Proof; Fact Sheet; McDonald's Scalding Coffee Case; testimony from Peter Michael

Meloy, Attorney at Law, Helena; Punitive Damages in Montana; Punitive Damages in Montana (part 2).
EXHIBIT(buh57a03)
EXHIBIT(buh57a04)
EXHIBIT(buh57a05)
EXHIBIT(buh57a06)
EXHIBIT(buh57a07)
{Tape: 1; Side: B; Approx. Time Counter: 123 - 230}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. BERGREN asked SEN. McNUTT if there were any states that had adopted this legislation. **REP. McNUTT** said there are 32 other states that have adopted this legislation.
{Tape: 1; Side: B; Approx. Time Counter: 230 - 241}

REP. BOOKOUT-REINICKE asked Mr. Crippen for an example of a punitive damage case. **Mr. Crippen** referred to the examples illustrated by Mr. Smith.
{Tape: 1; Side: B; Approx. Time Counter: 241 - 288}

REP. MORGAN asked Mr. Anderson if Montana had many cases regarding punitive damage. **Mr. Anderson** said there were only a few cases.
{Tape: 1; Side: B; Approx. Time Counter: 288 - 349}

REP. STEINBEISSER asked Ms. Jamison if punitive damages could be capped. **Ms. Jamison** said, with this legislation, they could be capped.
{Tape: 1; Side: B; Approx. Time Counter: 349 - 401}

REP. FRITZ asked Mr. Smith why there was not representation from the insurance agents. **Mr. Smith** said insurance companies do not generally insure general liability policies or punitive damage cases.
{Tape: 1; Side: B; Approx. Time Counter: 401 - 427}

REP. MATTHEWS asked Mr. Smith who sanctioned attorneys. **Mr. Smith** said if an attorney files a pleading with the court, the attorney does not have a good faith belief in backing for the facts and the law behind it.
{Tape: 1; Side: B; Approx. Time Counter: 427 - 464}

REP. KEANE asked SEN. McNUTT how the 3% of net worth would be determined. **SEN. McNUTT** said it would be an accounting

calculation taken off of the business' assets.
{Tape: 1; Side: B; Approx. Time Counter: 464 - 495}

REP. GALLIK asked Mr. Turkiewicz to clarify the example he had provided in his testimony. **Mr. Smith** said the defendant had spent over $200,000 in the case in which the court findings were in their favor. It was awaiting appeal. There is a threat of punitive damages in the process for the case to go to trial rather than to settle [the case out of court].
{Tape: 1; Side: B; Approx. Time Counter: 495 - Tape: 2; Side A; Approx. Time Counter 117}

CHAIRMAN McKENNEY asked Mr. Smith about the truckers he had alluded to as being a "target defendant." **Mr. Brian Smith** said in the business of litigation, there are certain defendants that are more apt to be named in lawsuits. Because of the type of business they run they are more apt to be found against in a lawsuit given the same amount of facts.
{Tape: 2; Side: A; Approx. Time Counter: 117 - 166}

Closing by Sponsor:

The Sponsor closed and indicated REP. Brueggman will carry the bill on the House Floor.
{Tape: 2; Side: A; Approx. Time Counter: 166 - 197}

EXHIBIT 1
DATE 3-18-03
SB 363

Testimony in Support of Senate Bill 363
Before House Business & Labor Committee

March 18, 2003

Ken Crippen
General Counsel
Watkins and Shepard Trucking, Inc.
Missoula, Montana 59803

Thank you Mr. Chairman. My name is Ken Crippen. I am General Counsel to Watkins and Shepard Trucking, Inc. in Missoula. I am here testifying in support of Senate Bill 363.

The trucking industry is in a financial crisis. Over 10,000 trucking companies, large and small, have filed bankruptcy in the last three years. You may have read about the situation involving Consolidated Freightways one of the five largest companies in the Country. Many Montana companies have also been victims and several more are just barely hanging on.

The trucking industry in Montana employs 1 in 11 workers and is a major part of our economy. Trucks move 88% of Montana's manufactured goods and many Montana communities are served only by trucks. Trucking will play a key role in any economic development in Montana and in the recovery of our national economy.

The major reason for the crisis facing our industry is skyrocketing insurance premiums. Premiums for liability insurance have doubled and for some tripled during the last two years. In September 2001 our liability premium at Watkins and Shepard Trucking increased from $1.5 million annually to $3.5 million with most of the increase occurring in the excess layers over the first million dollars in coverage. In 2002 our insurance carrier asked us for another increase of $500,000 after not having had one serious accident in over 60 million miles. Not a single dollar of the $3.5 million premium we paid for insurance in 2001 was used by our insurance carriers to pay accident claims, yet they required an additional increase in 2002 of 15%!

The recent doubling and tripling of insurance premiums is primarily caused by increasingly large jury verdicts and mediation awards driven higher because of the threat of punitive damages. Such verdicts and awards have risen to levels that for some in the trucking industry are not insurable. Most insurance companies are losing money writing trucking insurance and have completely quit writing it. With very few insurance companies writing trucking business there are no affordable alternatives for the industry.

One dangerous alternative that many trucking companies in Montana and elsewhere have turned to is lower insurance limits. Many Montana trucking companies now maintain only the federally required $1,000,000 in liability insurance coverage. Not only are they risking the future of their companies, but worse, they have significantly reduced the availability of insurance to victims of serious accidents. I think everyone would agree that this is bad corporate policy, but it also the wrong public policy for this State. However, reducing insurance limits has become the only alternative to the rising cost of insurance. Relief to the rising costs of insurance is the only way to stop this dangerous trend in our industry and I suspect it may be the trend in many industries in Montana. Senate Bill 363 would help bring some relief.

Unless legislation is passed to keep awards reasonable and insurable there is no relief in sight. Insurance rates will continue to climb out of control, insurance availability will continue to diminish and trucking companies will continue to go out of business. Those companies that are strong enough to survive will have to increase their shipping rates in equivalent amounts passing the costs on to other industries and eventually to the consumer. The impact of rising insurance costs is not just a trucking industry problem, it has and will continue to impact all industries and will come to rest in the consumer's lap.

Let me conclude by stating that you will undoubtedly hear testimony that Senate Bill 363 will reduce compensation to the victims of serious accidents. Opponents of this Bill may present victims of accidents here today. However, nothing within this legislation will in any way reduce the compensation to deserving victims. This legislation does not limit

the availability of compensation for damage items such as pain and suffering, medical expenses, lost wages, loss of consortium and the myriad other compensatory damages available to victims under Montana law. This is important and we support the appropriate compensation of accident victims for the damages they have suffered. Unlimited punitive damage awards, however, are a windfall that is causing serious problems to the future of the trucking industry, other industries in our state and will ultimately harm the injured citizens of this state by limiting the availability of insurance to compensate them for their injuries.

We urge passage of Senate Bill 363 and I thank you for your time.

EXHIBIT 2
DATE 3-18-03
SB 363

MONTANA MOTOR CARRIERS ASSOCIATION

501 NORTH SANDERS #201 HELENA MT 59601 406-442-6600 FAX 406-443-4281 www.mttrucking.org

March 18, 2003

Testimony SB 363

Mr. Chairman, members of the House Judiciary Committee, for the record I am Spook Stang Executive Vice President of the Montana Motor Carriers Association. The MMCA and its 800 members statewide would like to go on record in support of SB 363. The trucking industry represents the very heart of transportation in this country. Most trucking companies are small and the industry is highly competitive with ultra slim profit margins. Unfortunately those seeking to cash in on accidents involving trucks perceive the trucking business as having "deep pockets". However, each huge judgment directly impacts not only the company involved, but also its employees, its customers, and ultimately the economy that company is part of. The following statistics demonstrate the growing problem:

- Trucking company bankruptcies totaled almost 13,000 companies between 1997 and 2001 and it appears that in the year 2002 that they will equal 6000;
- Multi-million-dollar judgments against trucking companies rose from just 7 in 1990 to 113 in 2000;
- Insurance costs are a greater proportion of revenue than ever before-3.5% of operating costs as of early 2001, before Sept 11;
- Only 10 insurance companies nationwide still providing truckers insurance and less than that in Montana;
- Trucking companies faced an average 32% increase in premiums in 2001 before 9/11, and
- Net profits are, on the average, a mere 2.1%

Civil lawsuits of all kinds, including tort claims, create an insidious "Tort Tax", of $205 billion a year, or $721 for every man women and child in the US. The "tax" is applied to every product we pay for, every good we consume, and every insurance premium we pay whether it is liability, health or homeowners. In other words it is the citizens of this state who pay, regardless of who writes the check.

In August of 2001 the membership of the MMCA at their annual convention decided that tort reform should be our number one priority in the next legislative session. The membership was so strong in its conviction that we were able to convince the American Trucking Associations (ATA) to make it their number one priority nationwide

The ATA put together an Insurance task force to look at some of the solutions that might help the industry. The conclusion was that we needed to work on tort reform on a state-by-state basis. Tort reform can take many different forms. For the trucking industry, the most important of these include:

- Protection from paying an unfair share of a plaintiff's compensation
- Protection from compensatory damages that allow plaintiffs double-dipping
- Protection by allowing evidence that plaintiffs injuries are attributable to failure to wear a seat belt.
- Protection from outlandish punitive damages
-

SB 363 is a result of that task force and addresses the last issue.

As the committee knows punitive damages have nothing to do with providing full compensation to any individual for wrong, injury, or breach of contract. That kind of damage in our court system is unaffected by any limitation on punitive damages. The theory behind punitive damages is that the injury is so egregious and so negligent that the injuring party must be penalized even further so as to discourage that action from ever occurring again. They are solely to punish, never compensate, and are always awarded ***in addition*** to full compensation to a plaintiff for plaintiff's losses. Assessing the penalty is quite tricky, and is oftentimes tied to the wealth of the defendant (one of the few times that this kind of information is made available during court proceedings, as it is otherwise deemed prejudicial against the defendant with considerable assets). Anyone who argues that this kind of reform would prevent injured people from getting full compensation does not know what punitive damages are, ***or knows and wishes to mislead.***

In the testimony that I have handed out I have a letter from a Montana trucking company who was threatened with punitive damages for an accident that was not his fault, in fact the investigating officer said his driver had taken all of the

necessary steps to avoid the accident. The opponents of this bill will say that we do not have a problem in Montana because there have been few punitive damage awards given. The fact is the threat of punitive damages (which you generally cannot insure for) exists, as this letter proves. This threat drives up the costs of settlements, as many companies do not want to be dragged through the court system until a sympathetic jury can be found.

In closing Mr. Chairman and members of the committee without limits on punitive damages a million dollar judgment for compensatory damages can be multiplied infinitum, with limits the award is capped making the award predictable and more equitable. As I stated before it is not the insurance companies who pay for these inflated awards. It is us the citizens of Montana who is paying this "tort tax" of $721 per man women and child through the higher cost of goods, services, health insurance, homeowners insurance and auto insurance. The citizens of Montana need you to help us get relief from these added costs to society.

Thanks you for the time you have provided me and I will try to answer questions at the appropriate time.

DIVERSIFIED TRANSFER & STORAGE, INC.

CONTRACT & COMMON CARRIER
FREIGHT FORWARDER
WAREHOUSING & LOGISTICS SERVICES

1640 MONAD ROAD • BILLINGS, MONTANA 59101-3200 • 406-245-4695 • FAX 406-245-5404 • www.dtsb.com

March 18, 2003

House Business and Labor Committee
Montana State Capitol
Helena, Mt. 59620

Re: SB 363

Dear Representatives

I have worked long hours for the past 20 years building a group of businesses in transportation. One expects to work hard and have something to show for it. All of the hard work was threatened a couple of years ago because of an accident that wasn't our company's fault.

A 5 year old boy was riding a stolen 10 speed bicycle, no brakes, and ran into the side of one of our trucks. The little boy had bounced off of the fuel tank and landed in the highway, causing head injuries. The Highway Patrolman commented how our driver was not at fault and had taken necessary evasive action. Two problems, it was on an Indian reservation and a trial lawyer knew trucking companies must have insurance. Soon the trial lawyer informed the insurance company of his demands, 10 million dollars. To really scare me, the suit wanted punitive damages which are not covered by insurance. Punitive damages because our driver allegedly was not properly trained according to the trial lawyer. Although we were not at fault, the trial lawyer was confident that if he didn't convince the jury the first time, after two or three appeals he would get a sympathetic jury and win a very large judgment. The insurance company must weigh options, the cost of a trial and many appeals, the potential of a multi-million dollar judgment, or being blackmailed into an out of court settlement. At what point does the fact that we were not at fault protect us? Innocent until proven guilty? Fair and equitable justice for all? Years of hard work down the drain because of the ability of a trial lawyer to make a jury feel sorry for a young boy. Tort reform must be accomplished. We all have tremendous liability under the current laws.

I am asking for your support with efforts to bring about tort reform both nationally and within our state. This is the number one issue for business organizations in Montana. Please support SB 363

Sincerely,

Jay Foley

& Associates Insurance, Inc.

February 17, 2003

Senate Judiciary Committee
Montana State Capitol
Helena, MT

RE: SB 363

Dear Committee Members:

First I would like to apologize for being unable to appear before you this morning.

I am the owner of a transportation insurance agency in Montana. Over the years I have seen many ups and downs in the trucking industry in Montana, but the crisis we face today will affect all Montana businesses. Along with the increased regulation and swiftly rising fuel cost, the cost of insurance has escalated beyond control.

The limit of punitive damage does not always get paid by the insuror, but directly by the Montana citizen. I have witnessed what I feel are very excessive awards given out in cases.

The bottom line is that I feel that tort reform and limiting punitive judgements would serve to bring some stability to the market.

Punitive judgments were not meant to be a reward for compensatory damages, but are a means of penalizing individuals who continually act in a negligent manner. In most insurance policies, punitive damages are not insured unless specifically stated. In many court cases lawyers hold the threat of punitive damages over the heads of the insured to try to get a larger settlement for real damages, as defendants fear that punitive damages may be rewarded, thus putting them out of business.

Who pays for this in the end? It is not the insurance companies, but it is the citizens of Montana who now must pay higher premiums for their health, vehicle and homeowners insurance.

P.O. Box 80007 • Billings, Montana 59108-0007 • Phone 406-656-9666 • Fax 406-656-8889

P.O. Box 3807 • Missoula, Montana 59806 • Phone 406-728-7386 • Fax 406-721-8484

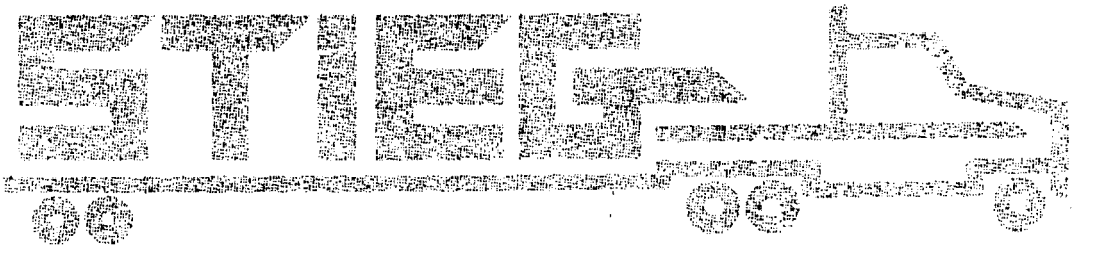
Members of the committee please bring some normalcy back to the system and support SB 363, while it may not immediately curb insurance rates it will let a number of insurance companies and tax payers know that we have a fair system in Montana and will serve to increase the number of companies willing to do business here.

Thanks for your time to read my testimony and your willingness to serve Montanan's in such difficult times.

Sincerely,

Walter D. Stieg

Walter D. Stieg



RAYMOND CORCORAN TRUCKING INC.

2-14-03

To whom it may concern

Raymond Corcoran Trucking Inc has had increases of 25 to 35 % in our Insurance premiums in the past three years, at this rate in three more years our premiums will be an estimated ($ 1,000,000.00) per year. To stay competitive in our industry we are not able to raise our rates to off set this cost. For us to stay in business we would have to start laying off employees at the same percentage rate as our increase in premiums. We would go from a 145 employees to 51 in the next three years.

We are a very strong supporter of tort reform in Montana.

Thank you,

Rod Korte

532 KLENCK LANE · BILLINGS, MT 59101 · (406) 252-7054 · (800) 548-7047 · FAX (406) 252-4711
email: rctinc@raymondcorcorantrkg.com

VOTERS SAY "TOO MANY LAWSUITS," ACCORDING TO NEW NATIONAL POLL ON TORT REFORM

SURVEY FINDS TORT REFORM ENJOYS BROAD BIPARTISAN SUPPORT; PERSONAL INJURY LAWYERS VIEWED AS PROBLEM

Washington, DC, February 27, 2003 — The American Tort Reform Association (ATRA) today released the results of a national poll that found eighty-three percent of Americans think there are too many lawsuits filed in the U.S. and that greedy personal injury lawyers are to blame. Tort reform enjoys broad bipartisan support as a way to curb frivolous lawsuits.

"This poll confirms that Americans are sick and tired of the 'strike it rich' mentality fostered by an out of control civil justice system," said ATRA President Sherman Joyce. "The American electorate feels the pain of excessive lawsuit abuse through higher costs of goods and services as well as in the quality of healthcare they are receiving."

"There is clearly broad support for tort reform as a means to reign in greedy personal injury lawyers that are manipulating our legal system for personal financial gain at the expense of the average consumer," added Joyce. Forty-five percent of those surveyed said they supported tort reform as a means to curb frivolous lawsuits, while only 6 percent opposed it.

Noting that states across the nation are going through a healthcare crisis driven in large part by excessive litigation, Joyce said, "The medical liability system has taken an enormous toll on accessibility to quality healthcare nationwide."

"The cost of lawsuit abuse is also hurting our already suffering economy and costing thousands of jobs for American workers," Joyce said. Tort costs in the United States increased 14.3 percent from the year 2000 to 2001, the largest single-year increase since 1986, according to a study by Tillinghast-Towers Perrin, an actuarial firm. The study indicates total costs for 2001 at $205 billion or $721 per U.S. citizen compared to $179 billion or $636 per U.S. citizen in 2000.

Commenting on President Bush's strong support for tort reform both as Governor of Texas and as President, Joyce added, "I would urge both state and federal legislators to follow the lead of President Bush by making legal reform a priority."

ATRA forecasts this could be the busiest year for civil justice reforms on both the state and federal levels since 1995. More than 40 states are expected to introduce some

Barry Stang

From: Walt Stieg [wstieg@stieginsurance.com]

Sent: Monday, March 17, 2003 5:02 PM

To: Spook Stang

Cc: Walter D. Stieg

Subject: Punitive Damages

Spook, I would like to give the following thoughts to you in hopes of conveying them on to the Legislators concerning punitive damage. Sorry that I can't be there to appear in person.

The limiting of Punitive Damage again is a business matter for ALL of Montana. In most cases punitive damage is not covered under most insurance policies and even then may or mayNOT be awarded by the court to be paid by insurer. I will attempt to outline my believe of both cases. This is the best I can do in my 28 years of insuring the transportation industry.

First in the case of uninsured punitive the short story is that it is bad for the business climate in Montana. An award for mistake in business that any one of us could make, leaves one subject to the liberal court systems award. This takes the enticement of out of the risk reward system of doing business here.

Second, I can speak more clearly on is the case of the paid punitive or threat of suit for punitive. Any claim that is paid is rated for in one manner or another. Punitive damages are really unanticipated dollars out on claims and thus drive up the premiums on renewals and/or new accounts. They also greatly weigh into the decision to renew or NON renew an account. This is as much the account itself as it is any accounts in a particular state that awards this type of damage to any insured. All actuaries rate for probable loss and open ended punitive awards create a desire not to look favorably on insuring any one or all business in that state. In todays market loss ratio period is a huge part of the renewal/new business equation. If the insurer pays a $100,000 on a claim with a premium of $50,000. the loss ratio will be bad for three years minium. Who wants to write an account with a proven bad loss ratio? This could likely cause no quotes or very high rates.

The same results could be in a case where the attorney threatens punitive and thus driving up the cost of settling a claim even though the insurer actually didn't pay punitive damages directly. This is actually more likely in Montana than the punitive award.

In any case you can clearly see that excessive punitive damage are a direct cause of inflated insurance rates or even insurability at all. Thanks ladies and gentlemen for your attention to this. AND for you careful consideration of the damages of excessive punitive damage. Walter D. Stieg

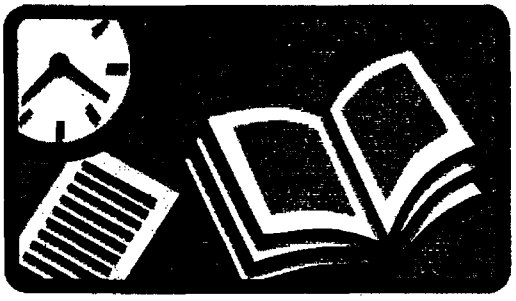


Exhibit: 3

The following exhibit contains several pages, which exceeded the maximum amount that can be scanned.

If you wish to view this exhibit, please contact the:
Montana Historical Society
225 N. Roberts Street
Helena, MT 59601
(406) 444-4774

EXHIBIT 4
DATE 3-18-03
SB 363

Montana's Punitve Code - Proof:

27-1-221. Punitive damages -- liability -- proof -- award.

(1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if the defendant:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less than beyond a reasonable doubt.

(6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury. An award of punitive damages must be unanimous as to liability and amount.

(7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, the judge shall clearly state the reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;
(ii) the extent of the defendant's wrongdoing;
(iii) the intent of the defendant in committing the wrong;
(iv) the profitability of the defendant's wrongdoing, if applicable;
(v) the amount of actual damages awarded by the jury;
(vi) the defendant's net worth;
(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;
(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and
(ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, the judge may do so. The judge shall clearly state the reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

(8) This section is not intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth.

History: En. Sec. 4290, Civ. C. 1895; re-en. Sec. 6047, Rev. C. 1907; re-en. Sec. 8666, R.C.M. 1921; Cal. Civ. C. Sec. 3294; Field. Civ. C. Sec. 1839; re-en. Sec. 8666, R.C.M. 1935; R.C.M. 1947, 17-208; amd. Sec. 2, Ch. 507, L. 1985; amd. Sec. 2, Ch. 627, L. 1987; amd. Sec. 33, Ch. 16, L. 1991; amd. Sec. 1, Ch. 328, L. 1997.

EXHIBIT 5
DATE 3-18-03
SB 363

FACT SHEET: MCDONALD'S SCALDING COFFEE CASE

Stella Liebeck of Albuquerque, New Mexico, was in the passenger seat of her grandson's car when she was severely burned by McDonald's coffee in February 1992. Liebeck ordered coffee that was served in a Styrofoam cup at the drive-through window of a local McDonald's.

After receiving the order, the grandson pulled his car forward and stopped momentarily so that Liebeck could add cream and sugar to her coffee. (Critics of civil justice, who have pounced on this case, often charge that Liebeck was driving the car or that the vehicle was in motion when she spilled the coffee; neither is true.) Liebeck placed the cup between her knees and attempted to remove the plastic lid from the cup. As she removed the lid, the entire contents of the cup spilled into her lap.

The sweatpants Liebeck was wearing absorbed the coffee and held it next to her skin. A vascular surgeon determined that Liebeck suffered full thickness burns (or third-degree burns) over 6 percent of her body, including her inner thighs, perineum, buttocks, and genital and groin areas. She was hospitalized for eight days, during which time she underwent skin grafting. Liebeck, who also underwent debridement treatments, sought to settle her claim for $20,000, but McDonald's refused.

During discovery, McDonald's produced documents showing more than 700 claims by people burned by its coffee between 1982 and 1992. Some claims involved third-degree burns substantially similar to Liebeck's. This history documented McDonald's knowledge about the extent and nature of this hazard.

McDonald's also said during discovery that, based on a consultant's advice, it held its coffee at between 180 and 190 degrees Fahrenheit to maintain optimum taste. Other establishments sell coffee at substantially lower temperatures, and coffee served at home is generally 135 to 140 degrees.

Further, McDonald's quality assurance manager testified that the company actively enforces a requirement that coffee be held in the pot at 185 degrees, plus or minus five degrees. He also testified that a burn hazard exists with any food substance served at 140 degrees or above, and that McDonald's coffee, at the temperature at which it was poured into Styrofoam cups, was not fit for consumption because it would burn the mouth and throat. The quality assurance manager admitted that burns would occur, but testified that McDonald's had no intention of reducing the "holding temperature" of its coffee.

Plaintiff's expert, a scholar in thermodynamics as applied to human skin burns, testified that liquids, at 180 degrees, will cause a full thickness burn to human skin in two to seven seconds. Other testimony showed that as the temperature decreases toward 155 degrees, the extent of the burn relative to that temperature decreases exponentially. Thus, if Liebeck's spill had involved coffee at 155 degrees, the liquid would have cooled and given her time to avoid a serious burn.

McDonald's asserted that customers buy coffee on their way to work or home, intending to consume it there. However, the company's own research showed that customers intend to consume the coffee immediately while driving.

McDonald's also argued that consumers know coffee is hot and that its customers want it that way. The company admitted its customers were unaware that they could suffer third-degree burns from the coffee and that a statement on the side of the cup was not a "warning" but a "reminder" since the location of the writing would not warn customers of the hazard.

The jury awarded Liebeck $200,000 in compensatory damages. This amount was reduced to $160,000 because the jury found Liebeck 20 percent at fault in the spill. The jury also awarded Liebeck $2.7 million in punitive damages, which equals about two days of McDonald's coffee sales.

Post-verdict investigation found that the temperature of coffee at the local Albuquerque McDonald's had dropped to 158 degrees Fahrenheit.

The trial court subsequently reduced the punitive award to $480,000 -- or three times compensatory damages -- even though the judge called McDonald's conduct reckless, callous and willful. Subsequent to remittitur, the parties entered a post-verdict settlement.

EXHIBIT 6
DATE 3-18-03
SB 362

Meloy Law Firm

ATTORNEYS AT LAW

PETER MICHAEL MELOY
JENNIFER S. HENDRICKS

POLLY BAILEY, PARALEGAL
LORRIE COLE, LEGAL ASSISTANT
DENISE ROBERTS, SECRETARY

THE BLUESTONE
80 SOUTH WARREN
P.O. BOX 1241
HELENA, MT 59624
TELEPHONE 406•442•8670
FACSIMILE 406•442•4953

meloylaw@qwest.net
hendricksmt@qwest.net

pollybailey@qwest.net
lorriecole@qwest.net
denisemroberts@qwest.net

March 11, 2003

Representative Joe McKenney
Chairman
Business and Labor Committee
Montana House of Representatives
P.O. Box 200400
Helena, MT 59620-0400

Re: Senate Bill 363

Dear Representative McKenney:

This is in regards to Senate Bill 363 which limits awards of punitive damages. I had hoped to testify in opposition to this Bill, but I am in trial in Federal Court in Great Falls on Thursday. I would appreciate it if you'd make this letter a part of the record.

As you know, punitive or exemplary damages are recognized in virtually all jurisdictions as proper when public policy requires assessment of such damages to deter conduct which is fraudulent, malicious, oppressive, wanton or reckless. This is a necessary safeguard to assure the wealthy and powerful do not have unbridled power in the marketplace.

Although an award of punitive damages is uncommon in this country and rarely happens in Montana, the threat of such awards is a key element in assuring that the wealthy do not take advantage of that power to unreasonably harm the average citizen. This is particularly true in the area of consumer products.

I have a case in point. I represent a number of Montana residents who have heart valve damage as a result of using Redux or Pondimin, a diet drug manufactured by Wyeth, a multinational drug company. One of my clients is a Helena woman who is the sole supporter of her 100% disabled Vietnam Veteran husband and their two children. She has primary pulmonary hypertension (PPH) caused by ingestion of Redux. PPH is uniformly fatal. The registry documented an average of mean survival as 2.8 years from the time it is diagnosed. It's worse than cancer and worse than AIDS. Its symptoms are one of strangulation or drowning.

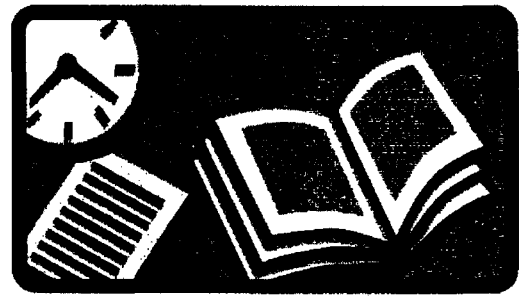


Exhibit: 7

The following exhibit contains several pages, which exceeded the maximum amount that can be scanned.

If you wish to view this exhibit, please contact the:
Montana Historical Society
225 N. Roberts Street
Helena, MT 59601
(406) 444-4774

Energy connects & corroborates some recent facts of proving large lizards-tyranosaur spirits-to be the basic cause of violence. Geographically, bombings, suicides & worse, hackings & shootings near everywhere but mostly around the tropics, Africa & Arabia, Indonesia & the Philipines have been influenced by energy, of interdependent sensi--tivities to powerful growth & orbital forces among the approx. 1000's:1 majority ratio of non-human entities & lifeforms environmentally here eons before us, historically evident in the climate failure in ancient Egypt & the Niles aligators, guillotines in Europe over centuries, Pearl Harbor, Vietnam (has large lizards), hurricanes between Africa & Florida's crocodilles, & tornadoes-I'm certain tornadoes originated near the 19th c. as there are no significant American Indian wallpaintings of any tornadoes, but there were metal traps, bird cages, swirl plumbing & crocodille eggs.. 17th & 18th c. lynchings happened along the Eastern U.S. coast as did sept. 11, '01. Some of the hijackers lived awhile in Florida. Decades of cool air conditioning in fundamentally, eons-ago established, natural orderly warm climates (the globe has had 'double pneumonia': Mississippi River floods in 1993 & twice in 2002 because cold snows & cooling precipatates-& in cloud interfaces-absolutely clear & certain global ice age freezing weather trends for near a decade)-fundamental environmental order has been of diminishing certain proven volitional control-goodwilling entities proven by consistent equinoxes, crop & biologic growth: eons of smiling horses, smiling dolphins: some per-cent of clouds are certainly consciousnesses (UFO's, crop circles,...)-decades of dozens, 100's of flying machine crashes, some near 20 yearly globally, of increasing (caesarian (unnatural) & premature births, & historically shrunken heads tropically near-by large lizard zones (flying's for birds). Of universal geographic proximities to violent, destructive saurians, without protection of kindly benign orderly volitionally powerful quadrupeds & fishes (6 month visits approx. fair) including in their natural habitats, 72° low limit & warmer room air conditioning customs globally (except long driving), sensitive rightly natural warm cat & dog noses & bug antennaes (ants probably certainly monitor 'our metabolisms some short whiles over days), without aligator & crocodille hunts & farming the southern hemisphere, non-aggressive military occupations expanding civilization by english language big tents & videos & TVs, portable music goods & softball-see, confused & neglected & abused eons of fish & quadrupeds by large voracious consistently malevolent destructive large lizards preying upon powerful growth & orbital energies pervasively are why people & armies have been loosing control of themselves over centuries. The civil war should have been a crocodille hunt with low ceiling dirigibles later perhaps, & gay & heterosexual 4-way semi-clothed quick minutes of semi-clothed position sexed. pictures, encouragements & discouragements to both groups in the classrooms from early adolescence & funded approx. 16 yr. old marriages for healthier genetics... The comet is set on crash & burn without aligator & crocodille hunts-to extinction of those & more efficient smaller lizard, spider, snakes, elseways worse for any & all peaceful kindly, benign entities.

[Much of Africa & Arabia's underprivileged, militarized, confused by Arabic calligraphy, & volatile]

[Abolish bird cages, & abolish bird hunting] [Walk & float obstetrics: slippery painless H_2O 'easy': else-maso-sad-ic flats...] [stretch & stretch gay male tailpipes' ~12-20# limit...]

[And, by either or both exercise & wine (20% port particularly) & baths, no one should be on death row: natural exorcism: preventative happiness]

[Pervasive energy control: never make exceptions to 100% driving habits, regulations, & brake pedal reflex for every hill & curve in & out of towns to prevent eye-open blank-out attention fades from energy impingements, 'white lightening', & naps save lives, sleep's powerful & consistent & warns with drowsiness at least once... don't resist sleep much, driving.]

BA 70 MA 74 Mike Barrett poet, etc. 3-13-03

EXHIBIT 9
DATE 3-18-03
SB 363

Pedestrians hit by cars on Higgins

After Wilma boxer injured, mother hurt outside theater

By ERICKA SCHENCK-SMITH
of the Missoulian

Just before 10 p.m. Tuesday night, two pedestrians were struck by cars along the same stretch of Higgins Avenue. This came shortly after a boxer at the nearby Wilma suffered a serious head injury during a bout.

One of the pedestrians injured was the mother of the injured boxer, witnesses said.

"It got pretty confusing because we had two of them back-to-back, and we only thought we had one," Missoula police officer Jerry Odlin said of the pedestrian-vehicle incidents.

The first call involved a 17-year-old boy who was leaving the Wilma's Wednesday Night at the Fights. Odlin said the boy was running across Higgins in the middle of the block just outside the theater when he saw a northbound vehicle approaching. He tried to stop but slid on the slushy road and ran into the vehicle, hitting just in front of the driver's side door.

The boy was taken to St. Patrick Hospital, where he was treated and released Thursday night, Odlin said.

The driver – an off-duty Lake County Sheriff's deputy who was driving his personal vehicle – was not cited, Odlin said. The boy was ticketed for failing to yield to oncoming traffic when he wasn't at a crosswalk.

The second call involved 51-year-old Kathy Riley, who was crossing Higgins against the light at the intersection with Front Street, Odlin said. She, too, was struck by a northbound vehicle. Witnesses said she was hurrying to her car because her son had been injured in one of the fights.

Nate "Irish" Riley suffered a severe head injury during his fight. He underwent emergency surgery at St. Patrick Hospital to relieve pressure on his brain and was listed in critical condition Thursday evening.

Neither the driver nor Kathy Riley were cited in the accident, police Lt. Rocky Harris said.

Kathy Riley was taken to St. Patrick Hospital, where a spokeswoman said she had been released Wednesday.

Boxer has surgery after fight

Missoula boxer Nate "Irish" Riley is in critical condition in St. Patrick Hospital after undergoing emergency surgery as the result of a head injury suffered in a bout at the Wilma Theater on Wednesday night.

Riley, 19-5-1, was knocked out in the third round of his 170-pound bout by Shane Cooke. Riley sustained what was termed a "severe head injury" by Bruce Danielson of Wednesday Night at the Fights. Danielson said Riley had surgery to relieve pressure on his brain.

In other bouts, Aaron Vandyken earned a decision over Wesley Thomason, JJ Sangrey downed Jacob Verrue, Jeremiah Butenschoen decisioned Tom Blixt, Tim Zahn defeated Channingn Demontiney, Carole Stinson outpointed Sarris McComb, and Mike Gergen knocked out previously unbeaten Leo Bercier.

Trainers, fighters air Club Boxing complaints

Promoter says he's willing to listen to complaints, disputes safety allegation

By CHAD DUNDAS
of the Missoulian

The promoter of Club Boxing at the Wilma Theatre didn't have proper medical personnel to care for an amateur boxer who sustained a severe head injury at last Wednesday's bouts, a group of fighters and trainers said at a press conference Saturday.

Boxer Nate Riley remains in critical condition at St. Patrick Hospital.

Three boxers and two trainers from Sakura Warrior Arts in Missoula said Club Boxing promoter Bob LeCoure's ringside doctor was a chiropractor and there was no ambulance, emergency medical technicians or trauma kit available to treat Riley after he was injured during a fight.

"(The chiropractor) has nothing to do with any type of neurology or being a medical doctor, as far as we know," said Kris Harrison, who coached several fighters at the event.

Concerns about medical care topped a list of nearly a dozen grievances. Boxers said they don't approve of protective gear provided by Club Boxing, the absence of a post-fight physical for fighters and the frequency with which boxers are asked to compete.

LeCoure, who promotes several Club Boxing events around Montana and Idaho, including the one in Missoula, disputes that the chiropractor, Bill McNulty of Stevensville, is not qualified to be the ringside doctor.

"What is a doctor going to do? We could have a neurosurgeon there and he would do exactly the same thing that Bill McNulty did," he said from his Butte home late Saturday.

McNulty did not return a phone message left at his home Saturday evening.

LeCoure said it's nearly impossible to find a medical doctor to sit ringside because it's a major time commitment for the doctor and hiring one would simply be too expensive.

"To get an M.D. to work every single week for 26 weeks would be a total, virtual impossibility," he said.

At the press conference, the fighters also complained some of the equipment is old and worn, and they'd like to see the kind of headgear and

See **BOXING,** *Page B8*

Boxer

Continued

gloves used at the event changed.

Jason Matovich, a former Oregon Golden Gloves champion who has fought at Wednesday Night at the Fights, said he didn't want to see Club Boxing shut down but none of Sakura's boxers would compete again until fighter safety is improved.

"I've been downstairs at the Wilma," Matovich said. "I've seen more shell-shocked boxers that have been told, 'Get up, just walk around.' These guys are dizzy, they're throwing up. Every week you go down there and you'll see this. Our goal in this is to make Club Boxing safer."

LeCoure said Club Boxing has changed the gloves several times this season.

"We change these gloves regularly. We don't use new gloves at every event. ... I don't know if they (the fighters) know this but we've changed the gloves three or four times this year," he said.

LeCoure said if fighters felt comfortable with a different style of glove, he would consider changing them.

But Harrison said promoters should provide new gloves for every event and that more shock-absorbent mouthpieces should be given to fighters. Weight classes should be strictly enforced, Harrison said, and added that Sakura fighters had turned down fights against opponents that outweighed them by more than 30 pounds.

Shane Cook, the amateur boxer who was in the ring with Riley when the injury occurred, also said he's seen Club Boxing employees who were clearly intoxicated while on the job. He said that after one fight, he was approached by one of the bout's judges, who was so drunk he could barely stand.

"Drunk as a skunk," Cook said. "If he didn't have his arm around me he would have fallen down."

LeCoure said he was unaware of any of his employees being drunk at the fights.

"I would hope not," he said. "We tell our judges and referees that if they want to have a beer during intermission, they can. But not to the point of intoxication.

"I haven't been there for every event, but it better damn well not be going on or else those judges will be replaced."

Matovich said he believed Riley had been fighting on a schedule of three weeks on and one week off. Harrison said he thought that was too much, saying he discouraged amateurs from fighting more than once a month.

"We're pulling our fighters out of this event until some things absolutely happen," Harrison said.

Riley was knocked out in the third round of his fight with Cook. After the fight Riley's coaches took him to the basement of the Wilma, where other fighters were cooling down and recuperating from their bouts. Minutes later, Harrison said, Riley's girlfriend came upstairs asking for ice and aspirin to relieve pain in Riley's head.

Harrison, a professional fighter and a trained EMT, said giving Riley an aspirin could be fatal.

"Anytime you take an aspirin after you've had ... any type of brain injury, it's like opening the floodgates to brain swelling and having blood fill up your head," Harrison said. Riley was not given any aspirin, he said.

Harrison said he went to check on Riley and found him conscious but slow to answer questions. Riley didn't know what month it was, Harrison said. Harrison told Riley's mother to take him to the hospital, but Riley's condition deteriorated quickly in the next few minutes and Harrison told her to call 9-1-1.

LeCoure stressed that he'll listen to fighters' concerns and would be willing to change some things if needed.

"I'm not so bull-headed. If there are things that I'm missing that would increase the safety for fighters, I'll consider changing them," he said.

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON			✓

/s/Bus&LaborRollCall.2003

Montana House of Representatives
Visitors Register

BUSINESS & LABOR COMMITTEE Date _____

Bill No. SB 363 Sponsor(s) McNutt

PLEASE PRINT PLEASE PRINT PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Steve Turkiewicz	MT Auto Dealers	X		
KEN CRIPPEN	Watkins and Shepard Trucking	X		
Brian Smith	TEI	X		
Pat Melby	MT Med Assn	✓		
William Leary	MT Bankers Ass	✓		
Riley Johnson	NFIB	✓		
MARK TAYLOR	MHA	X		
WEBB BROWN	MONTANA CHAMBER	X		
Barry Stang	MMCA	/		
Brad Griffith	MT Retail Assoc.	X		
Charles Brooks	Billings Chamber	X		
Carl Schweitzer	Kalispell & Bozeman Chambers & ASTM	X		
Brad Griffith	Flathead Business & Travel Assoc.	X		
Don Allen	WEBA	X		
Tim McGee	MCIS	X		
Larry Anderson			✓	
Al Smith	MTLA		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 24, 2003 at 10:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: Rep. Kathleen Galvin-Halcro (D)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 304 (3/14/03); SB 315 (3/14/03)
Executive Action: SB 363 Be Concurred As Amended

EXECUTIVE ACTION ON SB 363

{Tape: 2; Side: B; Approx. Time Counter: 1 - 278}

Motion: **REP. BOOKOUT-REINICKE moved that SB 363 BE CONCURRED IN.**
Motion: **REP. BOOKOUT-REINICKE moved that SB 363 BE AMENDED.**
EXHIBIT(buh62a02)

Discussion:

REP. GALLIK said that he approves of the amendment.

REP. MORGAN indicated that some trucking firms were in the business of hauling hazardous waste. **REP. BOOKOUT-REINICKE** said, "If there was hazardous waste, the liability was carried by the Department of Environmental Quality."

Vote: **A roll call vote was taken. Motion carried 11-7 to adopt amendments. REPS. BERGREN, BITNEY, FRITZ, GALLIK, GALVIN-HALCRO, WEISS, WILSON voting no and REP. KEANE giving a voice vote for REP. GALVIN-HALCRO.**

Discussion:

REPS. KEANE, GALLIK, WEISS, BITNEY opposed the bill.

Motion/Vote: **REP. BOOKOUT-REINICKE moved that SB 363 BE CONCURRED IN AS AMENDED. A roll call vote was taken. Motion carried 11-7 REPS. BERGREN, KEANE, FRITZ, GALLIK, GALVIN-HALCRO, WEISS, WILSON voting no and REP. KEANE giving a voice vote for REP. GALVIN-HALCRO.**

REP. BRUEGGEMAN will carry the bill on the House Floor.

EXHIBIT 2
DATE 3-24-03
SB 363

Amendments to Senate Bill No. 363
3rd Reading Copy

Requested by Representative Sylvia Bookout-Reinicke

For the House Business and Labor Committee

Prepared by Bartley Campbell
March 20, 2003 (11:11am)

1. Title, line 4.
Following: "CASES"
Insert: "OTHER THAN CLASS ACTION LAWSUITS"

2. Page 1, line 20.
Following: "LESS."
Insert: "This subsection does not limit punitive damages that may be awarded in class action lawsuits."

- END -

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 3-24-03

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO			✓
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

/s/Bus&LaborRollCall.2003

HOUSE STANDING COMMITTEE REPORT

March 24, 2003

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 363** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Representative Joe McKenney, Chair

To be carried by Representative John Brueggeman

And, that such amendments read:

1. Title, line 4.
Following: "CASES"
Insert: "OTHER THAN CLASS ACTION LAWSUITS"

2. Page 1, line 20.
Following: "LESS."
Insert: "This subsection does not limit punitive damages that may be awarded in class action lawsuits."

- END -

Committee Vote:
Yes 11, No 7.

3-24-03

621306SC.hhn

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2-24-03 BILL NO SB363 MOTION NO. 1
MOTION: AMENDMENT

NAME	AYE	NO	ABSENTEE
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN		✓	
REP. ROD BITNEY		✓	
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ		✓	
REP. DAVE GALLIK		✓	
REP. KATHLEEN GALVIN-HALCRO		✓	
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS		✓	
REP. BILL WILSON		✓	
	11	7	

/s/Bus&LaborRollCallVote.2003

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 3-24-03 BILL NO SB 363 MOTION NO. 2
MOTION: ~~DO PASS AS AMEND~~
BE CONCUR AS AMEND

NAME	AYE	NO	ABSENTEE
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY		✓	
REP. BOB BERGREN		✓	
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ		✓	
REP. DAVE GALLIK		✓	
REP. KATHLEEN GALVIN-HALCRO		✓	
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS		✓	
REP. BILL WILSON		✓	
	11	7	

/s/Bus&LaborRollCallVote.2003